Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

APPENDIX

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-1363

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

—v.—

J. WEINGARTEN, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED MARCH 8, 1974
CERTIORARI GRANTED APRIL 29, 1974

Supreme Court of the United States

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No. 73-1363

NATIONAL LABOR RELATIONS BOARD,
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—v.—

J. WEINGARTEN, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

IN THE MATTER OF:
J. WEINGARTEN, INC.

Case No. 23-CA-4401

6.20.72	Charge filed
7.17.72	Amended charge filed
8. 8.72	Complaint and notice of hearing issued
8.21.72	Respondent's answer to complaint and motion to dismiss, received
8.30.72	General Counsel's response and opposition to Respondent's motion to dismiss, dated
9. 6.72	Administrative Law Judge Arthur Leff's order on Respondent's motion, dated
9.28.72	Hearing opened
9.28.72	Hearing closed
11.21.72	Administrative Law Judge's Decision issued
12.11.72	Respondent's exceptions to Administrative Law Judge's Decision, received
12.14.72	General Counsel's statement of exceptions to the Administrative Law Judge's Decision, received
3.16.73	Decision and Order issued by the National Labor Relations Board
10. 9.73	Opinion of the court of appeals
4.29.74	Order of the Supreme Court granting certiorari

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-THREE

Case No. 23-CA-4401

J. WEINGARTEN, INC.

and

RETAIL CLERKS UNION, LOCAL NO. 455, RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO

COMPLAINT AND NOTICE OF HEARING

It having been charged by Retail Clerks Union, Local No. 455, Retail Clerks International Association, AFL-CIO, herein called Union, that J. Weingarten, Inc., herein called Respondent, has engaged in, and is engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151, *et seq.*, herein called the Act, the General Counsel of the National Labor Relations Board, on behalf of the Board, by the undersigned Regional Director for Region Twenty-three, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations, Series 8, as amended, Section 102.15, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1.

(a) The charge herein was filed by the Union on June 20, 1972, and served on Respondent by registered United States mail on or about June 20, 1972.

(b) An amended charge herein was filed by the Union on July 17, 1972, and served on Respondent by registered United States mail on or about July 17, 1972.

2.

Respondent is, and has been at all times material herein, a corporation organized and existing by virtue of the laws

of the State of Texas, having its principal offices located in Houston, Texas, where it is engaged in the retail sale of grocery and sundry items.

3.

During the past 12 months, a representative period, Respondent received goods valued in excess of $50,000, which goods were shipped directly to its Texas facilities from points located outside the State of Texas. During the same period of time, Respondent had a gross volume of sales in excess of $500,000.

4.

Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

5.

The Union is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

6.

At all times material herein, the following named persons occupied the positions set opposite their respective names, and have been, and are now, agents of Respondent, acting on its behalf, and are supervisors within the meaning of Section 2(11) of the Act:

Monroe Rochester	—Vice-President, Personnel
Joe Perry	—Assistant Personnel Director
Joe York	—Store Manager, Store No. 98

7.

At all times material herein Don Hardy, Loss Prevention Specialist, has been, and is now, an agent of Respondent, acting on its behalf, and is an agent within the meaning of Section 2(13) of the Act.

8.

Respondent, by its officers, agents, and supervisors, since on or about June 15, 1972, has interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, by the following acts and conduct:

On or about June 15, 1972, Store Manager York required employee Leura Collins to be present and submit to an interview in his office at Respondent's Store No. 98, where Store Manager York and Loss Prevention Specialist Hardy interviewed Collins concerning her having allegedly engaged in the unauthorized removal of company property; having allegedly misappropriated company funds and/or other property of value; and allegedly having taken company property without paying full value therefor, while at all times denying Collins' repeated requests to have her Union representative present at such interview.

9.

All employees in the J. Weingarten, Inc., retail stores, excluding all Korner Pantry type stores, located in the Texas Counties of Harris, Brazos, Waller, Fort Bend, Brazoria, Grimes, Montgomery, Liberty, Chambers, Galveston, Hardin, Jefferson, Jasper, Newton, and Orange, excluding store managers, assistant store managers, management trainees, meat department managers, employees working in the meat department, employees in the delicatessen departments in those stores where the delicatessen department is consolidated with the meat department, non-food department managers, nursery center employees, employees employed in the stamp redemption centers which are located physically apart from the Employer's retail grocery stores, office clerical employees who work separately and apart from the retail grocery stores, professional employees, guards, watchmen, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

10.

At all times material herein, a majority of the employees in the unit described above in paragraph 9 have designated or selected the Union as their representative for the purposes of collective bargaining with Respondent.

11.

At all times material herein, the Union has been the representative for the purposes of collective bargaining of the employees in the unit described above in paragraph 9, and, by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of all the employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

12.

Commencing on or about June 15, 1972, and at all times thereafter, Respondent did refuse, and continues to refuse, to bargain collectively with the Union as the exclusive collective bargaining representative of all the employees in the unit described above in paragraph 9, in that Respondent, on or about June 15, 1972, unilaterally changed existing wage rates and terms and conditions of employment by discontinuing giving free lunches to employee Leura Collins and other employees, and has, upon repeated demands by the Union for the reinstatement of the free lunches, continued to refuse to give free lunches as had been Respondent's past practice.

13.

By the acts and conduct described in paragraphs 8 and 12 above, and by each of said acts, Respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

14.

By the acts described in paragraph 12 and by each of said acts, Respondent has refused, and is refusing to bargain collectively with the Union, and thereby did engage in, and is engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and Section 2(6) and (7) of the Act.

15.

The acts of Respondent described in paragraphs 8 and 12 above, occurring in connection with the operations of Respondent described in paragraphs 2, 3 and 4, above, have a close, intimate and substantial relation to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

16.

The acts of Respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5), and Section 2(6) and (7) of the Act.

PLEASE TAKE NOTICE that on the 28th day of September, 1972, at ten o'clock in the forenoon (CDST) in Room 214, Dallas-Brazos Building, 1125 Brazos Street in the city of Houston, Texas, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time you will have the right to appear in person or otherwise and give testimony. Form NLRB 4668, Summary of Standard Procedures in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Proceedings, is attached.

YOU ARE FURTHER NOTIFIED that, pursuant to Section 102.20 and 102.21 of the Board's Rules and Regulations, Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the

National Labor Relations Board, an original and four (4) copies of an Answer to said Complaint within ten (10) days from the service thereof, and that unless it does so, all of the allegations in the Complaint shall be deemed to be admitted to be true, and may be so found by the Board.

Dated at Houston, Texas, this 8th day of August, 1972.

/s/ Clifford W. Potter
CLIFFORD W. POTTER
National Labor Relations Board
Region Twenty-three
Dallas-Brazos Building
1125 Brazos Street
Houston, Texas 77002

SUMMARY OF STANDARD PROCEDURES IN FORMAL HEARINGS HELD BEFORE THE NATIONAL LABOR RELATIONS BOARD IN UNFAIR LABOR PRACTICE PROCEEDINGS PURSUANT TO SECTION 10 OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

The hearing will be conducted by a Trial Examiner of the National Labor Relations Board. He will preside at the hearing as an independent, impartial trier of the facts and the law and his decision in due time will be served on the parties. His headquarters are either in Washington, D.C. or San Francisco, California.

At the date, hour, and place for which the hearing is set, the Trial Examiner, upon the joint request of the parties, will conduct a "prehearing" conference, prior to or shortly after the opening of the hearing, to assure that the issues are sharp and clear-cut; or he may, on his own initiative, conduct such a conference. He will preside at any such conference, but he may, if the occasion arises, permit the parties to engage in private discussions. The conference will not be recorded, but it may well be that the labors of the conference will be evinced in the ultimate record—for example, in the form of statements of position, stipulations, and consessions. Except under unusual circumstances, the Trial Examiner conducting the prehearing conference will be the one who will conduct the hearing; and *it is expected that the formal hearing will commence or be resumed immediately upon completion of the prehearing conference.* No prejudice will result to any party unwilling to participate in or to make stipulations or concessions during any prehearing conference.

(This is not to be construed as preventing the parties from meeting earlier for similar purposes. To the contrary, the parties are encouraged to meet prior to the time set for hearing in an effort to narrow the issues.)

Parties may be represented by an attorney or other representative and present evidence relevant to the issues.

An official reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcrip for use in any court litigation. Proposed correctness of the transcript should be submitted, either by way of stipulation or motion, to the Trial Examiner for his approval.

All matter that is spoken in the hearing room while the hearing is in session will be recorded by the official reporter unless the Trial Examiner specifically directs off-the-record discussion. In the event that any party wishes to make off-the-record statements, a request to go off the record should be directed to the Trial Examiner and not to the official reporter.

Statements of reasons in support of motions and objections should be specific and concise. The Trial Examiner will allow an automatic exception to all adverse rulings, and, upon appropriate order, an objection and exception will be permitted to stand to an entire line of questioning.

All exhibits offered in evidence shall be in duplicate. Copies shall also be supplied to other parties. If a copy of any exhibit is not available at the time the original is received, it will be the responsibility of the party offering such exhibit to submit the copy before the close of hearing. In the event such copy is not submitted, and the filing thereof has not for good reason shown been waived by the Trial Examiner, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument, which shall be included in the stenographic report of the hearing. In the absence of a request, the Trial Examiner may himself ask for oral argument, if at the close of the hearing he believes that such argument would be beneficial to his understanding of the contentions of the parties and the factual issues involved.

Any party shall also be entitled upon request made before the close of the hearing, to file a brief or proposed

findings and conclusions, or both, with the Trial Examiner who will fix the time for such filing.

Attention of the parties is called to the following requirements laid down in Section 102.42 of the Board's Rules and Regulations with respect to the procedure to be followed *before* the proceeding is transferred to the Board:

No request for an extension of time within which to submit briefs or proposed findings to the Trial Examiner will be considered unless received by the Chief Trial Examiner in Washington, D.C. (or, in cases under the San Francisco, California branch office of Trial Examiners, the Associate Chief Trial Examiner in charge of such office) at least 3 days prior to the expiration of time fixed for the submission of such documents. Notice of request for such extension of time must be served simultaneously upon all other parties, and proof of such service furnished to the Chief Trial Examiner or Associate Chief Trial Examiner, as the case may be. All briefs or proposed findings filed with the Trial Examiner must be submitted in triplicate, and may be in typewritten, printed, or mimeographed form, with service upon the other parties.

In due course the Trial Examiner will prepare and file with the Board his decision in this proceeding, and will cause a copy thereof to be served upon each of the parties. Upon filing of the said decision, the Board will enter an order transferring this case to itself, and will serve copies of that order, setting forth the date of such transfer, upon all parties. At that point, the Trial Examiner's official connection with the case will cease.

The procedure to be followed before the Board from that point forward, with respect to the filing of exceptions to the Trial Examiner's Decision, the submission of supporting briefs, requests for oral argument before the Board, and related matters, is set forth in the Board's Rules and Regulations, Series 8, as amended, particularly in Section 102.46, and following sections. A summary of the more pertinent of these provisions will be served upon the parties together with the order transferring the case to the Board.

Adjustments or settlements consistent with the policies of the Act reduce government expenditures and promote amity in labor relations. Upon request, the Trial Examiner will afford reasonable opportunity during the hearing for discussion between the parties if adjustment appears possible, and may himself suggest it.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
TWENTY-THIRD REGION

Case No. 23-CA-4401

[Received Aug. 24, 1972, Div. of Trial Examiners, NLRB, Wash., D. C.]

J. WEINGARTEN, INC.

and

RETAIL CLERKS UNION, LOCAL NO. 455, RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO

ANSWER TO COMPLAINT AND MOTION TO DISMISS

TO THE HONORABLE NATIONAL LABOR RELATIONS BOARD:

NOW COMES J. Weingarten, Inc. hereinafter called "Respondent" and files this its Answer to Complaint on file herein and its Motion to Dismiss certain allegations in the Complaint, and by way of such Answer and such Motion would respectfully show the following:

FIRST DEFENSE

I.

Respondent admits the allegations of Paragraph 1 of said Complaint.

II.

Respondent admits the allegations of Paragraph 2 of said Complaint.

III.

Respondent admits the allegations of Paragraph 3 of said Complaint.

IV.

Respondent admits the allegations of Paragraph 4 of said Complaint.

V.

Respondent admits the allegations of Paragraph 5 of said Complaint.

VI.

Respondent admits the allegations of Paragraph 6 of said Complaint.

VII.

Respondent admits that Mr. Don Hardy is an employee of the Respondent but denies that Mr. Hardy is an agent acting on behalf of Respondent within the meaning of Section 2(13) of the Act.

VIII.

Respondent denies the allegations of Paragraph 8 of said Complaint.

IX.

Respondent admits the allegations of Paragraph 9 of said Complaint.

X.

Respondent admits the allegations of Paragraph 10 of said Complaint.

XI.

Respondent admits the allegations of Paragraph 11 of said Complaint.

XII.

Respondent denies the allegations of Paragraph 12 of said Complaint.

XIII.

Respondent denies the allegations of Paragraph 13 of said Complaint.

XIV.

Respondent denies the allegations of Paragraph 14 of said Complaint.

XV.

Respondent denies the allegations of Paragraph 15 of said Complaint.

XVI.

Respondent denies the allegations of Paragraph 16 of said Complaint.

SECOND DEFENSE

I.

That at all times material hereto, a valid collective bargaining Agreement was in existence between Retail Clerks Union Local No. 455, chartered by the Retail Clerks International Association, AFL-CIO, hereinafter referred to as the "Union," and the Respondent covering wages, hours, and conditions of employment, and which provided in Article XVIII, a dispute procedure providing for the exclusive method of processing and settling of "any differences, disputes, or complaints" arising "over the interpretation or application of the contents of this Agreement," and for final and binding arbitration of all such differences, disputes, or complaints which also includes disputes concerning fringe benefits of the employees covered thereunder.

II.

Respondent has at all times material hereto been ready and willing to submit to arbitration under the Agreement between the Respondent and the Union, the issue concerning the alleged unilateral changing of wage rates and terms and conditions of employment regarding the discontinuing of giving free lunches to employee Leura Collins and other employees.

III.

During the course of the investigation herein, the Twenty-Third Regional Office was informed by Respondent and the Union and of the Respondent's willingness

to proceed to arbitration over the matter concerning the alleged discontinuance of free lunches.

IV.

The Union herein at all times material hereto has failed to file a grievance and to proceed to arbitration under the Agreement.

V.

That the Agreement herein provides for voluntary, final and binding dispute and arbitration procedures and it has not been claimed that the alleged unilateral action of the Respondent undermines the Union, that the action of the Respondent is based upon a substantial claim of contractual privilege under the Management Rights provisions of the Agreement and that it appears that the arbitrable interpretation of the Agreement will resolve both the unfair labor practice issue and the contract interpretation issue in a matter compatible with the purpose and policies of the National Labor Relations Act, hereinafter referred to as the "Act," and the Board should defer the subject matter of the Respondent's alleged refusal to bargain allegations to the voluntary settlement procedures mutually agreed upon by the parties. *Collyer Insulated Wire*, 192 NLRB No. 150 (Aug. 20, 1971), *Bethlehem Steel Corp. (Shipbuilding Division)*, 195 NLRB No. 121 (June 21, 1972), and *Southwestern Bell Telephone Co.*, 198 NLRB No. 6 (July 31, 1972).

WHEREFORE, PREMISES CONSIDERED, Respondent respectfully prays that said Complaint be dismissed and denied in its entirety and that Respondent have such other and further relief as it may show itself justly entitled, or, in the alternative, that Respondent's Motion

to Dismiss be granted and that certain allegations of said Complaint be dismissed.

Respectfully submitted

FULBRIGHT, CROOKER & JAWORSKI

By /s/ L. G. Clinton, Jr.
L. G. CLINTON, JR.
NEIL MARTIN
800 Bank of the Southwest Building
Attorney for Respondent,
J. Weingarten, Inc.

CERTIFICATE OF SERVICE

I, L. G. Clinton, Jr., one of the Attorneys for J. Weingarten, Inc., do hereby certify that on the 18th day of August, 1972, I have served a true and correct copy of the foregoing Answer to the Complaint and Motion to Dismiss on the party listed below by mailing a copy thereof through the United States Mail, postage prepaid:

Mr. James P. Wolf
Dixie, Wolf & Hall
609 Fannin Street Building
Suite 401
Houston, Texas 77002

/s/ L. G. Clinton, Jr.
L. G. CLINTON, JR.

UNITED STATES OF AMERICA
BEFORE THE
NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D. C.

Case No. 23-CA-4401

J. WEINGARTEN, INC.

and

RETAIL CLERKS UNION, LOCAL NO. 455, RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO

ORDER ON RESPONDENT'S MOTION

The Respondent having filed as part of its Answer to the Complaint herein a Motion to Dismiss the refusal-to-bargain allegations of the Complaint; the General Counsel having filed a Response and Opposition to the said Motion; and the said Motion having been duly referred to the undersigned for disposition; now, after consideration of the aforesaid papers and the pleadings in this proceeding,

IT IS HEREBY ORDERED that the Respondent's Motion be, and the same hereby is, denied. The Complaint alleges in substance that the Respondent on or about June 15, 1972: (1) violated Section 8(a)(1) by denying the request of employee Leura Collins to have her union representative present at an interview at which she was to be interrogated concerning alleged misappropriation by her of Company funds and/or property; and (2) violated Section 8(a)(5) of the Act by unilaterally discontinuing giving free lunches to employee Leura Collins and other employees. Respondent's Motion to Dismiss appears to be addressed solely to the 8(a)(5) allegations of the Complaint. The Motion is predicated on the ground that the issue relating to the alleged unlawful unilateral action is one that should be deferred to the grievance and arbitration procedures which Respondent states are contained in an existing collective bargaining agreement

between the Charging Union and the Respondent that provides, *inter alia*, for the processing and settling of "any differences, disputes, or complaints" arising "over the interpretation or application of the contents of this agreement." The Respondent in its Motion asserts, but only in conclusory language, that its unilateral action complained of "is based upon a substantial claim of contractual privilege under the Management Rights provisions of the Agreement." The Respondent has not, however, attached to its motion papers, a copy of the collective bargaining agreement to which it refers. Nor has it set out in its motion papers the Management Rights provision on which it would support its claim of contractual privilege. I have thus no means for determining from the papers before me whether Respondent's claim of contractual privilege is indeed a substantial or even a colorable one which might make this an appropriate case for application of the *Collyer Insulated Wire* doctrine (192 NLRB No. 150). In sum, I find that no sufficient evidence has been submitted by Respondent to support its Motion, which is in effect a motion for partial summary judgment relating to the 8(a)(5) allegations of the Complaint, and that a hearing is therefore required on the issue presented.

/s/ Arthur Leff
ARTHUR LEFF
Administrative Law Judge

Dated: September 6, 1972
Washington, D.C.

[1]

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
TWENTY-THIRD REGION

In the Matter of:
J. WEINGARTEN, INC.

—and—

RETAIL CLERKS UNION, LOCAL NO. 455, RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO

Room 214
1125 Brazos Street
Houston, Texas
Thursday, Setpember 28, 1972

The above-entitled matter came on for hearing pursuant to notice, at 10:00o'clock a.m.

BEFORE:

HONORABLE JOSEPH I. NACHMAN, Administrative Law Judge

APPEARANCES:

WILLIAM H. HELMS, Esq., 1125 Brazos, Houston, Texas; appearing on behalf of the General Counsel.

NEIL MARTIN, Esq., (Fulbright, Crooker & Jaworski), 800 Bank of the Southwest Building, Houston, Texas; appearing on behalf of the Respondent.

• • • •

[3] PROCEEDINGS

JUDGE NACHMAN: The hearing will be in order, please.

This is a formal hearing before the National Labor Relations Board in the matter of J. Weingarten, Inc., Case No. 23-CA4401.

• • • •

[4] MR. HELMS: At this time, I'll offer into evidence the formal papers. They have been marked for identification as General Counsel's Exhibit Nos. 1(a) through 1(j)

inclusive, 1(j), being an index and description of the entire exhibit.

[5] This exhibit has already been shown to all parties.

JUDGE NACHMAN: Any objection?

MR. MARTIN: No objection.

JUDGE NACHMAN: GC 1 will be received.

(The documents above-referred to were marked for identification as General Counsel's Exhibit Nos. 1(a) through 1(j) and were received in evidence.)

MR. HELMS: At this time, I'd like to ask the reporter to mark for identification as General Counsel's Exhibit 2, a booklet purporting to be a bargaining agreement between the Charging Party union and—

JUDGE NACHMAN: Can you gentlemen stipulate as to the authenticity of that document?

MR. MARTIN: Your Honor, it's our intent to mark this for identification, and by stipulation enter it into the record.

JUDGE NACHMAN: All right.

It will be marked as GC 2.

(The document above-referred to was marked General Counsel's Exhibit No. 2 for identification.)

JUDGE NACHMAN: I understand the parties stipulate to the authenticity of the document—

MR. MARTIN: Just one moment, sir.

The Employer will so stipulate.

JUDGE NACHMAN: All right.

[6] You stipulate its receipt into evidence, I take it?

MR. MARTIN: Yes, sir.

GC-2 will be received.

(The document heretofore marked General Counsel's Exhibit No. 2 was received in evidence.)

• • • •

[23] JAMES C. PHILLIPS

was called as a witness by and on behalf of the National Labor Relations Board, • • •

DIRECT EXAMINATION

Q. (By Mr. Helm) Mr. Phillips, how are you employed?

A. I'm Business Representative for the Retail Clerks Union.

• • • •

MR. HELMS: Would you state your name for the record?

THE WITNESS: James Phillips, 6001 Gulf Freeway, Houston, Texas.

Q. (By Mr. Helms) Now, Mr. Phillips, you say you're a Business Representative for the Retail Clerks.

Is that Local No. 455?

A. Yes, sir.

Q. How long have you been such a representative?

A. About six and a half years, I believe.

Q. And during this six and a half years, have you had occasion to deal with Weingartens?

A. Yes, sir.

Q. How were you employed prior to the time you became a business representative for the Retail Clerks?

A. I was a produce manager employed by Weingartens.

[24] Q. And do you recall when the first contract negotiations were held between Weingartens and the Retail Clerks?

A. Yes, sir.

I served on the negotiating committee at that time.

Q. Do you recall when that was?

A. It was in 1965, I believe. March of '65.

Q. Do you recall the negotiations very well?

A. Yes, sir.

Q. Do you recall whether or not this matter of free lunches in Weingarten's stores was subject to negotiations?

A. To my knowledge, it never was a subject of any of the negotiations that I attended.

Q. Have the Retail Clerks had constant contractual relationships with Weingartens since 1965?

A. Yes, sir.

Q. Are you, in general, familiar with the negotiations between Weingartens and the Retail Clerks since that time?

A. To some degree, yes, sir.

Q. To your knowledge, has the question of free lunches ever been a question raised during negotiations or any of the contracts?

A. To my knowledge, it has never been.

• • • •

[26] Q. Were you aware of the situation concerning free lunches in the lobby department as distinguished from a lunch counter type operation?

A. I knew that the lunch departments always received the free lunches.

Q. Were you acquainted with the lobby department situation?

A. As far as my knowledge about the lobby department's not receiving them, that's never came up until this issue here.

JUDGE NACHMAN: You just didn't know it existed one way [27] or the other, whether it existed or not?

THE WITNESS: I just knew it existed in the lunch departments and that was it.

Q. (By Mr. Helms) Mr. Phillips, how did you learn about the lunch problem arising, one of the subjects of this case? How did you find out about it?

A. This was through a discussion with Leura Collins, after she had been interviewed, or was talked to at Weingartens No. 98, and through the discussion with her, this was when it arised.

Q. Do you recall about when that discussion was?

A. Well, in the first—there was a couple of times I talked to her, and I believe it was four or five days after the incident happened is when I talked to her the first time on it. I'm not sure about that.

Q. All right.

What action did you take in connection with what she reported to you, if any?

A. Well, I had a telephone conversation with Perry, I believe—

JUDGE NACHMAN: With who?

THE WITNESS: With Mr. Joe Perry, the assistant personnel director of Weingartens, and I stated to him that I felt that it was wrong in taking away these lunches out here because of the fact that it was taking some of their [28] benefits.

A few days after that, or some days after that, we filed a written grievance on it—or the representative of that store filed a written grievance on it.

JUDGE NACHMAN: You mean a grievance under the contract?

THE WITNESS: Yes.

Q. (By Mr. Helms) Has that grievance been processed?

A. No, sir.

JUDGE NACHMAN: Well, why hasn't it been processed? Because you don't want to go ahead with it, or the company doesn't want to go ahead with it?

THE WITNESS: One reason we held off on it was because of the Board case.

JUDGE NACHMAN: You're holding it up pending the outcome of the Board case?

THE WITNESS: Yes, sir.

Q. (By Mr. Helms) Now, you say you told Mr. Perry you thought it was wrong to take away these free lunches.

Did Mr. Perry—what did he say to you, if anything?

A. He stated it was a company policy that it eixsted in all lobby departments, that there was no free lunches. It only existed in the lunch departments.

JUDGE NACHMAN: Mr. Phillips, who made the decision not to go ahead with the grievance pending the outcome of the Board case? Was it the union's position, the company's [29] position, or who? Did you both agree on it?

THE WITNESS: No, sir, that was the union's position at that time, that—after it was filed, this was scheduled for a hearing, and we decided to wait, pending the outcome of this.

JUDGE NACHMAN: So, as far as you know, then, the company would always be willing to pursue the grievance?

THE WITNESS: The company has not denied the grievance or anything else as far as proceeding, to my knowledge.

JUDGE NACHMAN: So far as you know, they've perfectly willing to proceed under it?

THE WITNESS: As far as I know, they probably are.

JUDGE NACHMAN: All right.

Q. (By Mr. Helms) Mr. Phillips, as an employee—how were you an employee of Weingartens?

A. For a time, I believe I was there about 10 years, if I'm not mistaken. Ten or eleven. Something like that.

Q. As an employee, were you familiar with what action would be taken in connection with an employee who had taken money or merchandise from the store without paying for it?

• • • •

[33] Q. (By Mr. Helms) Mr. Phillips, in the recent past, say, in the last two years in your union capacity, have you had occasion to deal with the subject of theft from, or dishonesty on the part of a Weingarten employee?

A. Yes, sir.

Q. Could you pinpoint the latest time?

A. That would be kind of hard to say within the last —do you want the last two years here?

Q. Yes, sir.

A. Well, there's one incident that I believe happened in the last two years at one of the stores involved.

Some members of yours that were kids that I called—they were all teenagers, that were marking down discount merchandise to each other for—the checker was checking it out to them at a discount.

JUDGE NACHMAN: You mean the price on the merchandise was reduced?

[34] THE WITNESS: Right.

In other words, the items like a Hostess type ham I think was $12, and she marked it down to a dollar, or something like that. This kind of stuff. All of these were terminated.

JUDGE NACHMAN: Well, did you have any discussions with the company about it?

THE WITNESS: Yes, sir, I met with the supervisor, and at that time, the security people—

JUDGE NACHMAN: What was the company's position on that?

THE WITNESS: That they were stealing.

JUDGE NACHMAN: The company's position was that they were stealing. It was a dishonest act for which they were discharged?

THE WITNESS: Right.

There's many other ones that's more recent than that one, I believe. I'd have to go back to check the files to get dates and times for you if you wanted them.

JUDGE NACHMAN: Well, could you give me in a general way how many times you've had discussions with the company about alleged acts of dishonesty on the part of employees, and what position, if any, that the company took about them?

THE WITNESS: Well, if you pinpointed it in the last two years, it's going to be kind of hard, because basically a representative is filing grievances in the stores when this comes up and he is discussing this more at length when [35] it comes up as to whether it's dishonesty in that—

JUDGE NACHMAN: This takes place before you're called in?

THE WITNESS: The third step, or the last step is usually—if I'm going to get into a grievance, it's there. I don't usually get in on the beginning of a grievance.

JUDGE NACHMAN: How many occasions have you had to take it up with the company, matters of this kind?

THE WITNESS: In the last two years, it's very few, and the position that they've taken where dishonesty existed, and it was either through an employee admitting it or something like this, there was termination.

JUDGE NACHMAN: Go ahead.

Q. (By Mr. Helms) Have you known of any situation where dishonesty was established, that there was any other penalty besides discharge?

A. Not to my knowledge, no.

* * * *

CROSS EXAMINATION

[36] Q. (By Mr. Martin) Mr. Phillips, do you have personal knowledge of the policy of the company regarding thefts and related discipline to be meted out in every case?

A. Do I have personal knowledge of it?

Q. Yes.

A. Now, I don't know as far as personal knowledge. I only know the position that the company takes in each individual case.

Q. When they deal with you, right?

A. When they deal with me.

So, as far as having a policy—a copy of a set policy that they may have in existence, I don't know of any.

* * * *

Q. How many would you estimate within the last two or three years, how many cases of dishonesty involved your direct discussions with someone of the company in a management position?

A. Well, that I was actually involved in would probably be two or three, something like this.

Q. Two or three in the last two or three years?

A. Yes, something like that. It's hard to say.

* * * *

[39] MR. MARTIN: I'll ask the reporter to mark as an exhibit, Respondent's Exhibit No. 1.

JUDGE NACHMAN: This will be R-1. I'm marking this as Respondent's R No. 1.

(The document above-referred to was marked Respondent's Exhibit No. 1 for identification.)

Q. (By Mr. Martin) Mr. Phillips, looking at Respondent's No. 1, which has been marked for identification, can you identify this particular document?

[32] A. This is a copy of the grievance that was filed at Weingarten's No. 98 by John P. McCauley, business representative of the union, in dealing with the free lunches out there.

JUDGE NACHMAN: Is this dated?

MR. MARTIN: Is the date that appears on line number one, June 20, '72, is that the date on which this particular grievance was filed?

THE WITNESS: I would not be able to tell you, because I didn't file it. The business representative did. I believe you could probably check the date stamp where the company received it, and find out—

Q. (By Mr. Martin) Well, my question is, do you know when it was filed?

A. No, I do not know what date it was filed.

Q. Do you Mr. McCauley? Mr. John B. McCauley?

A. Yes, he's a representative of ours.

Q. With the Retail Clerks Union, No. 455?

A. Right.

JUDGE NACHMAN: He works under your supervision? You coordinate his activities?

THE WITNESS: Yes, sir, to a degree, yes, sir.

MR. MARTIN: We offer Respondent's Exhibit No. 1 into evidence.

JUDGE NACHMAN: Does this involve the particular employee involved in this case?

[41] MR. MARTIN: I'll ask the witness. It does not appear from the face of the document—

Q. (By Mr. Martin) Mr. Phillips, does this grievance involve Mrs. Collins and other employees of the store, No. 98?

A. It involves the lobby department of Weingartens No. 98, and it includes all employees.

Q. Mrs. Collins was at that time an employee?

A. She was at that time an employee in that department.

MR. MARTIN: We offer Respondent's Exhibit No. 1.

JUDGE NACHMAN: Any objection?

MR. HELMS: No objection.

JUDGE NACHMAN: It will be received.

(The document heretofore marked Respondent's Exhibit No. 1 was received in evidence.)

Q. (By Mr. Martin) Correct me if I'm wrong, Mr. Phillips, in response to a question earlier by the Administrative Judge, you said that you had no knowledge of the

policy of the company with regards to lunches in the lobby department before this date, is that correct?

A. Repeat that. I think you misunderstood.

Q. Well, maybe so.

My question is, did you testify earlier that the first time you knew about the policy in the lobby department was today when the company stated it's position before we went on the record with testimony?

[42] A. The only policy that I was aware of that dealt with the free lunches was, they existed in the lunch departments. The lobby, I assumed they were treated the same way. I did know one way or the other until this incident came up.

Q. Until this incident occurred?

A. Yes.

Q. And the way that you found out about that, you discussed it with Mr. Perry, is that right?

A. I discussed it with Leura. She was the one that brought it up about them not having free lunches, or the doing away with it. Then, I discussed it with Mr. Perry a few days later.

• • • •

Q. Is it a fact, Mr. Phillips, that you've had discussions with Mr. Perry within the last couple of years regarding some employees who were eating from stock where in those [43] cases those employees were not, in fact, discharged or disciplined in any way?

A. It would be—

Q. Sir?

A. To my knowledge, it would be hard to answer yes or no, but I presume I have, because there's many things we discuss over a period of time.

• • • •

[46] Q. Well, isn't it a fact that you had a discussion with Mr. Perry where this was—where no disciplinary action was taken in a case where employees were determined to be grazing in the store?

A. And as I answered earlier, if I have, to my recollection right now, I could not name you a time, place or anything else. Because, if I have—I probably have. I'll

agree there. But to when, or what was discussed, I do not remember at this time.

* * * *

LEURA COLLINS,

was called as a witness by and on behalf of the National [47] Labor Relations Board, * * *

DIRECT EXAMINATION

Q. (By Mr. Helm) Would you please state your name and address for the record?

A. My name is Leura Collins and I live at 3121 Mooney.

Q. Is that here in Houston?

A. In Houston, yes, sir.

Q. All right.

And how are you employed, Mrs. Collins?

A. I work—I was working in the lobby at the time that this occurred.

Q. What store was that?

A. Ninety-eight.

Q. How long have you worked for Weingartens?

A. Going on 11 years.

Q. How long have you worked at Store No. 98?

A. I went there when the store opened. I believe that was around a year—a little over two years. I don't know just when that store opened. I can't rememeber.

MR. HELMS: Could we have a stipulation as to when store No. 98 opened?

MR. MARTINS: We're prepared to stipulate that store No. 98 was opened October 26, 1970; and further that Mrs. Collins began employment on that date at the store.

[48] MR. HELMS: So stipulated.

JUDGE NACHMAN: Stipulation is approved.

Q. (By Mr. Helms) Did you work in the lobby department at all times in that store?

A. Yes, sir.

JUDGE NACHMAN: What do you mean by the lobby department? What is that?

THE WITNESS: Well, we serve lunches, and we sell barbecue chickens, links, beef—

JUDGE NACHMAN: For customers to take out or to eat there?

THE WITNESS: To take out or eat there.

JUDGE NACHMAN: That's different from the lunch counter?

THE WITNESS: Well, it's somewhat different. I mean, they serve lunches.

JUDGE NACHMAN: Well, it's a different department than the lunch counter?

THE WITNESS: Well, yes, I guess you would call it different.

JUDGE NACHMAN: All right.

Q. (By Mr. Helms) Had you previously, before going to work at store No. 98, worked in a lunch department?

A. Yes, sir, that was where I was hired, in the lunch department.

Q. Now, I take it that stores that have a lobby department do not also have a lunch department?

[49] A. Yes, sir, this one had a lunch department. We served plate lunches.

Q. Well, is the lunch department part of the lobby department at store No. 98?

A. Yes, sir.

Q. Is there a difference between a lobby department and a lunch department?

A. Well, yes, sir, I guess there are, because we sell more barbecue, I guess, you know. Barbecue chickens, we specialize more in that.

Q. All right.

Prior to the time that you were employed at store No. 98, had you been receiving free lunches, Mrs. Collins?

A. Yes, sir.

Q. What was the situation about the lunches after you went to work at store No. 98?

A. I was never told any different, that I was supposed to pay for my lunches. No one ever told me any different.

Q. Now many employees work in the lobby department at store No. 98?

A. Well, we have Jewell; Edna, she worked in there sometimes, the manager. And we have Sherry, and we

have Pauline, and—I believe it was about five or six. Some of them was parttime.

Q. Have you worked during lunchtime at sometime or another [50] during your course of your employment there with all of those employees that you named?

A. Yes, sir.

Q. Incidentally, do you have the last names of these people?

A. I believe Pauline Russian (sic) was her name, and Edna Odoms, and—I don't know Jewell's last name. And Sherry, I don't remember her last name.

Q. Do you know whether or not these other people, including the manager, Edna Odoms, also received free lunches at store 98?

A. Yes, sir, they all received free lunches.

Q. They received free lunches during the entire time that you were there?

A. Yes, sir.

Q. Who were you hired by initially by Weingartens, do you recall?

A. I believe Mr. England, and Billy Algood, at No. 2 on Jenson.

Q. Do you recall what, if anything, was said about free lunches at the time you was hired?

A. Yes, sir, they told me that I got one lunch free, and a drink.

JUDGE NACHMAN: One lunch a day?

THE WITNESS: Yes, sir.

Q. (By Mr. Helms) Are you a member of the Retail Clerks?

[51] A. Yes, sir, I've been one for about five or six years. Something similar to that.

Q. Now, directing your attention to June 14th of this year, could you tell us what—or did you go to store No. 90 that day?

A. Yes, sir, I was scheduled to work that day, but before I went to work, my church that I was going to was having a dinner, and I went there to purchase a dollar's worth of chicken and a loaf of bread and a cake, and I paid Jewell, I gave her the money for the stuff, and I left and

went to the church, taking the chicken, and then I returned to work.

Do you want me to go on?

Q. Yes, go ahead.

A. So, I worked that day, and I believe it was the next day, or the next, I was told that Jewell was to go upstairs and talk about being transferred to another store.

So, she went up and she came down and said that they had asked her to go to another store, and she refused.

So, Mr. York came down and told Edna—

JUDGE NACHMAN: Who is Mr. York?

THE WITNESS: Mr. York, he's the manager.

JUDGE NACHMAN: The manager of 98?

THE WITNESS: Yes, sir.

He told Edna that he wanted to talk to me upstairs, and I thought it was to, you know, go to another store.

[52] So, he came back down and said that there was too many people up there, that he would call me later.

So, a little later on, he came down and said that he was ready for me, and I went upstairs. Mr. York and the detective was sitting up there.

Q. (By Mr. Helms) Do you know the detective's name?

A. No, sir.

He introduced himself, but I didn't remember his name.

Q. Do you see him in this room?

A. Yes, sir.

That's him over there.

Q. The gentleman in the green shirt?

JUDGE NACHMAN: The man on the right or the man on the left?

THE WITNESS: He's on this side of Mr. York.

MR. HELMS: Mr. York is on the end there?

THE WITNESS: On the end, yes, sir.

So, he introduced himself and told me who he was and asked me my name and address and how long I had worked for Weingartens, and I told him.

So, he told me he wanted to talk to me about some stuff that I had gotten from Weingartens, $3.50 worth of chicken, and I paid a dollar for it. I told him that I didn't get that amount of chicken, that I got a dollar's worth of

chicken, a loaf of bread and a cake, and I paid Jewell for it.

[53] So, I began to feel then, you know, that something was going to happen, and I got scared about my job, and I asked could I have Billie—

JUDGE NACHMAN: Could you have what?

THE WITNESS: Billie, the union representative there, with me.

Q. (By Mr. Helms) Who is Billie? Do you know her last name?

A. Billie Brockett.

Q. Is she an employee of Weingartens?

A. Yes, sir.

Q. You say she's also a union representative or steward?

A. Union stewardess, yes, sir.

Q. Go ahead.

JUDGE NACHMAN: I take it she works at store No. 98?

THE WITNESS: Yes, sir.

So, they told me no, that I couldn't have it.

Q. (By Mr. Helm) Who told you that?

A. Mr. York did.

So, they went on to question me about this and he said—the detective told me that I had been putting money in my shoe, and I told him that I had trouble with my feet and I had been wearing houseshoes and I just stuck them out and I said, "How do you think that you could money in a shoe like this?"

[54] He said, "Well, you've been putting money in your pocket when you would take like a dollar and some change for a sale," that I would ring the change up and keep the dollar and put it in my pocket.

So, I told him that I had been working at Weingartens for 11 years and I'm the only support that me and my son has, and I would not take a chance on losing my job.

So, he went on and talked to me about that. He asked me had I taken anything from Weingartens without paying for it.

I told him no, that I hadn't, that I paid for everything I got.

He said that everyone at sometime taken things from Weingartens including himself and Mr. York, without paying for it. And he said, "Don't sit there and tell me that you haven't taken anything."

And I said, "Sir, I haven't taken anything from Weingartens except my lunch and not paying for it."

And Mr. York raised up then and said, "Since when have you—was you getting your lunch free?"

I said, "Mr. York, ever since I went to work for Weingartens, 11 years ago. They told me that I got my lunch free and I've never been told any different."

So, I again asked Mr. York—the detective went downstairs to ask the other girls were they getting their lunches free.

[55] JUDGE NACHMAN: The other girls where?

THE WITNESS: Downstairs in the lobby.

JUDGE NACHMAN: Did you go with him?

THE WITNESS: No, sir.

JUDGE NACHMAN: You don't know who he talked to?

THE WITNESS: No, sir.

So, then he got on the telephone and used the telephone. I don't know who he talked to. I couldn't hear it.

Q. (By Mr. Helms) Was the telephone there in Mr. York's office?

A. Yes, sir, it was off to the side.

JUDGE NACHMAN: In his private office, where the telephone was?

THE WITNESS: It's all upstairs, but his office was sort of over to the side.

JUDGE NACHMAN: Well, why couldn't you hear what he was saying?

THE WITNESS: Well, it was off over from us. We were sitting back—

JUDGE NACHMAN: You were too far away?

THE WITNESS: Yes, sir.

So, I asked Mr. York, I said—I commenced to crying and I told him, I said, "I'm not scared of being accused of something I haven't done because I haven't done anything, but could I have Billie up here with me, the union representative."

[56] And he said, "No." He said, "That's why I'm here."

He said, "Let me put it like this. If you go to the bathroom, we all three go."

So, the detective came back and sat down and talked a little while and he made up a deal where I said—

Q. What do you mean "he made out a deal?"

A. A statement saying that I had gotten my lunches.

JUDGE NACHMAN: You mean he wrote out a statement?

THE WITNESS: Yes, sir.

He typed it out and he said that I owed Weingartens around a hundred and sixty something dollars. I don't remember the exact number, and he wanted me to sign this deal, this form.

So, I refused to sign it, and so they kept insisting that I sign this form, and I told them no, that I wasn't going to sign it, that I needed my job, and I didn't know, you know, how that would effect my job.

So, the telephone rang about this time and the detective answered it and he came back after he got through talking on the phone, and he jerked this slip out and tore it up and told Mr. York that I was right, that they had said that we would get our lunches.

So, I had asked several times for Billie or the union representative and they refused me every time.

So, after he had gotten this telephone call, Mr. York told me that I could go home for the rest of the day, have [57] it off, on account of being embarrassed.

I told him that I wasn't embarrassed because I hadn't done anything and I had paid for everything that I had gotten.

He said that he wanted to ask two favors of me, to not mention that to anyone—

Q. (By Mr. Helms) Now, who asked you this?

A. Mr. York said to not mention it to anyone about it, because if anyone found out about it, I would be the one to tell it. He wouldn't tell it, and to take off and go home that evening.

So, I went home. At about 4:30 after Billie Brockett got off, she called me to find out what happened and I told her what had happened.

The next morning I called the union and told them about it.

Q. Was there anything else said to you by Mr. York or by Mr. Hardy upstairs there that you recall?

JUDGE NACHMAN: Who is Mr. Hardy?

MR. HELMS: The detective. It's in the complaint, sir.

I believe he is a Loss Prevention Specialist, is his title.

JUDGE NACHMAN: In the complaint—

MR. HELMS: In the complaint, they deny—

JUDGE NACHMAN: Oh, I see where he's got it.

MR. HELMS: Paragraph 7, "Don Hardy, Loss Prevention [58] Specialist."

JUDGE NACHMAN: Yeah, that's denied. That paragraph is denied. They denied that he's an agent.

I just want the record to be clear. You mentioned his name. I want to know who they are.

Can you gentlemen stipulate that the so-called detective is Mr. Hardy?

MR. MARTIN: Yes, we'll stipulate that Mr. Hardy, Mr. Don Hardy is an employee of Weingartens, is not a detective for any law enforcement agency, is a Loss Prevention specialist with the company.

MR. HELMS: I believe that part is admitted in the answer, Your Honor.

JUDGE NACHMAN: All right.

Q. (By Mr. Helms) OK, now.

Was anything else said by Mr. Hardy or Mr. York upstairs that you recall?

A. Well, they were some other words spoken, but I can't recall, you know—

Q. Do you recall if he said something as to about being in a financial bind?

A. Yes, sir.

The detective asked me, he said, "I realize, "—you know, I had been off on sick leave and he said, "Now, it could be that you're in a financial way, and you need some help. [59] Weingartens would try to help you."

I told him, "No." that I wasn't in no bind, that I was getting by just like everyone else. It was nothing extra,

but I was getting by, that I was the only support for me and my son, and we was making it all right.

Q. Now, Mrs. Collins, do you know whether or not prior to this day that Mr. York knew whether you were getting free lunches or not?

A. No, sir, I don't really know whether he did or not.

Q. You indicate that there in his office, this seemed to be something new to him?

A. Yes, sir.

JUDGE NACHMAN: Do you know whether the other employees in the lobby department got their lunch there every day?

THE WITNESS: Yes, sir.

JUDGE NACHMAN: Did they pay for it?

THE WITNESS: No, sir, they got them free.

JUDGE NACHMAN: You know this?

THE WITNESS: Yes, sir.

I went back downstairs and the girls talked about it, said they didn't know it theirselves, and they had been getting them.

JUDGE NACHMAN: All right.

Go ahead.

Q. (By Mr. Helms) How long did you continue after that [60] date to get free lunches?

A. I don't really recall. I believe it was the next day or so we was told that we was supposed to pay for our lunches.

Q. Who told you?

A. Edna Odoms.

JUDGE NACHMAN: She's the manager of that department?

THE WITNESS: Yes, sir.

MR. HELMS: Pass the witness.

CROSS EXAMINATION

* * * *

Q. (By Mr. Martin) Mrs. Collins, when you were employed 11 years ago or so in store No. 2, did they have a lunch counter?

A. Yes, sir.

Q. In store 14 where you worked, I think you testified [61] they had a lunch counter there too, is that right?

A. No. 14? No, sir, they have a lobby.

Q. They have a lobby.

A. Yes, sir.

They called it "lobby", but they do have lunches.

JUDGE NACHMAN: Did you ever work at store No. 14?

THE WITNESS: I'm in No. 14 now.

Q. (By Mr. Martin) You were transferred, then, to store No. 62, is that correct?

A. Yes, from No. 2 to 62.

Q. Did they have a lunch counter?

A. Yes, sir.

Q. Was that in about 1968 when you were transferred? Do you recall?

A. Yes, sir, I believe around there.

Q. Did you receive free lunches there?

A. Yes, sir.

Q. When you were transferred from store 62, you went directly to store No. 98, did you not?

A. Yes, sir.

Q. Was your classification at store No. 62 different than from store No. 98?

A. Yes, sir. I was in the lobby. They call it the lobby.

Q. In what department were you in store 62? What was your classification?

[62] A. Lunch counter.

Q. Were you present at any of the meetings, orientation meetings that were held prior to store No. 98 opening its doors to the public?

A. No, sir.

Q. Do you know whether or not there were such orientation meetings held between employees and management?

A. No, sir, I don't.

Q. What are Edna Odoms duties? Do you know what she does?

A. Well, she mostly attended to the bakery, but she was the manager over the lobby and the bakery, but she was the bakery—

MR. MARTIN: We would invite, Your Honor, a stipulation from Counsel for the General Counsel, if possible, that Mrs. Edna Odom is an employee in the bargaining unit covered by the contract.

JUDGE NACHMAN: I didn't know there was any question about that.

MR. MARTIN: Well, the title is a manager. In some stores, certain managers in certain departments are included in collective bargaining agreements, and in some stores they are not. I'm trying to establish that so we wouldn't have to go into questioning in this particular issue, by stipulation that—

JUDGE NACHMAN: See if General Counsel will stipulate.

[63] MR. HELMS: So stipulated, that this Edna Odoms is a unit employee.

Q. (By Mr. Martin) When were you transferred to store 14 from store 98, Mrs. Collins? Do you recall?

• • • •

THE WITNESS: I really don't recall the exact—because I've been—I was off on sick leave after this other happened.

I think it's been—I don't really know exactly, about six or seven weeks, I believe. Something similar to that.

Q. (By Mr. Martin) Did you request to be transferred?

A. Yes, sir.

Q. Was your classification changed?

A. No, sir.

Q. Was your salary changed?

A. No, sir.

Q. Mrs. Collins, when you were asked to come to talk to Mr. York, where did this conversation occur with Mr. York?

We know it occurred in store 98, but where in the store, do you recall?

[64] A. Upstairs in the lounge where he has his office, over the lobby department.

Q. Is the lounge partitioned? His office partitioned in any way from the rest of the lounge?

A. No, sir.

Q. You do not know, or is it partitioned?

A. No, sir, it's not got a partition in it.

Q. As I understand then, it's all an open area?

A. Yes, sir.

Q. Is it a fact that he has a desk up there that he uses?

A. He has it over in front there, you know, in front of the lounge.

JUDGE NACHMAN: Your conversation with Mr. York was some distance away from his desk?

THE WITNESS: Yes, sir.

Q. (By Mr. Martin) Where did the conversation occur in that lobby area?

A. Well, his desk was sort of over in the front and we was back a good ways from his desk.

Q. Were you at a table?

A. Yes, sir.

Q. An ordinary lounge type table?

A. Yes, sir, the ones they eat on up there.

Q. Was the interview conducted in any area where you were partitioned from the lobby at all?

[65] A. No, the lobby is downstairs and we were upstairs.

Q. I'm sorry.

The lounge.

My question is, while you were being interviewed, isn't it a fact that you were in full view of everyone who would come up into the lounge area?

A. If they come up in there, yes, sir.

Q. Did you ever request, Mrs. Collins, that the interview be terminated?

A. Put that—

Q. Did you ever ask for them to stop the questioning? Did you ever say, "I've just had enough," or "I want to stop."

A. No, sir, I didn't know I could do that.

Q. How long did the interview last? Do you know?

A. Well, I don't know exactly because I didn't look at the clock, but it was somewhere about around an hour and a half.

Q. What did you discuss aside from what you related on direct examination?

A. I don't understand your question.

Q. Well, on direct examination you testified as to certain conversations that occurred between Mr. York, Mr. Hardy, and you, is that correct?

A. I still don't understand what you mean.

JUDGE NACHMAN: Well, Mr. Helms was asking you some [66] questions. You told him about certain conversations that you had up there.

THE WITNESS: Yes, sir, the questions and things that they asked.

JUDGE NACHMAN: Well, Counsel wants to know, did you talk about anything else?

THE WITNESS: No, sir.

Q. (By Mr. Martin) Did you talk for the entire approximately one hour and a half on just what you testified on direct examination, is that correct?

A. Yes, sir.

Q. Now, it's a fact, isn't it, Mrs. Collins, that no one has ever told you that you were not entitled to free lunches at store No. 98, is that right?

A. No one ever told me that I wasn't supposed to get lunches.

Q. Isn't it a fact, Mrs. Collins, that when you first talked about union representation there in this interview, that you told Mr. York, "shouldn't the union be present?"

A. No, sir, I asked him if I could have one of them up there with me.

Q. What words did you use, do you recall?

JUDGE NACHMAN: In other words, repeat exactly what you told Mr. York at that time.

THE WITNESS: Well, I asked Mr. York if I could have [67] Billie, the union representative—I mean, the union stewardess up there or a union representative, and he said no, that's why he was there.

Q. (By Mr. Martin) Did you ever use any other words that you recall at any other time that you made this statement about union representation except, "Could I have Billie or the union stewardess up there?"

A. No, sir, I always asked if I could have Billie, the union stewardess or a union representative, and they refused me.

Q. Is that—Mr. Hardy refused you as well as Mr. York—

A. I think I referred to Mr. York, asking him.

Q. So, Mr. York refused you, is that correct?

A. Yes.

Q. And what exactly did he say?

A. Well, he told me no a time or two, that I couldn't, that that was why he was there. I asked him over if I could have them and he said no, that's why he was there, and that—he said, "Let me put it like this. If you go to the bathroom, we all three go."

Q. Did Mr. York ever say anything about it being a personal matter or a private matter between you and the company?

A. No, sir.

Q. Did he ever say anything about not wanting to get other employees involved during the interview?

[68] A. No, sir.

Q. Did he ever say that he was asking you about, or going to ask you about your alleged participating in theft?

A. I don't quite.—

Q. Did he ever say he was going to ask you about your being involved in stealing money?

A. No, sir.

Q. Did they ever say during the interview that they were going to ask you about taking food without paying for it?

A. Nothing was ever said about that until he asked—the detective asked me had I ever taken anything from Weingartens, and I told him that I had never taken anything from Weingartens without paying for it, but my lunch.

And that's when it came up.

Q. At the beginning of the interview, were you apprehensive about your job? Were you afraid for your job at the beginning of your interview?

A. Yes, sir, I was because I'm the only that supports me and my son, and that's the only way I have of making a living.

Q. Isn't it a fact, though, that you believed when you went to the interview that it was about a transfer?

A. Yes, sir. That's what I thought it was about.

Q. So, when the interview began, you were not concerned about your job status with the company, were you?

A. Sir?

[69] Q When the interview began, were you concerned about or fearful for you job?

A. Well, when I found out what it was all about, yes, sir. I was scared for my job because I knew that I had not done anything.

Q. Answer my question, Mrs. Collins.

At what point did you feel like that you—that your job was exposed to danger, and what caused you to feel that way?

A. Because others had lost their jobs in signing papers, and it was misrepresented to them, and I was afraid that I would sign this paper and something else would be put on it like I had been told.

Now, I don't know this to be sure, but I have been told that it happened. And that's what made me feel that my job was in danger, because this form that he typed up where we got our lunches, he wanted me to sign this. And others had signed papers, and they had said other stuff had been put on there and they had lost their jobs, and that was what I was afraid.

I asked Mr. York if I had to sign it, and he said, "Well, it's your own words."

Q. Do you recall when you were asked to sign the paper as far as—was it late in the interview, at the beginning, the middle, or can you place it as far as time? Wasn't it [70] toward the end of the interview after you had gotten through all of the discussion that it was being typed, after it was typed—

A. During the conversation—the conversation was going on about the chicken and stuff, that he had brought up.

Q. But didn't he ask you sign it—hand it to you and ask you to sing it and that's when you became concerned about your job?

A. No, sir, he never did hand it to me. He told me that he was going to fix this out in my words, and they wanted me to sign it saying that I owed Weingartens.

Q. And you owed them because of what reason?

A. The lunches.

Q. The free lunches, is that right?

A. Yes, sir.

Q. After the interview was terminated, isn't it a fact that Mr. York asked you if you wanted to have the rest of the day off?

A. No, sir, he told me I could take off.

Q. Was there any reason for you to be concerned, or were you concerned about taking free lunches?

A. No, sir, I wasn't because I was told that I was supposed to get my lunches, and I was never told any different.

Q. And you had not engaged in any theft, is that right.

A. No, sir.

[71] Q. So, you weren't afraid of them asking questions about theft, were you?

A. No, sir.

Q. Since the interview, have you had occasion to discuss what happened with anyone other than the union stewardess?

A. No, sir. I usually talk with her, and I did talk with Mr. James Phillips.

JUDGE NACHMAN: You didn't talk to any employee?

THE WITNESS: No, sir.

Q. (By Mr. Martin) What did you talk about with Mr. Phillips, do you recall, about this incident?

A. Well, I just explained to him about what happened?

Q. And what did he say?

A. He didn't say anything. I called him out to listen to my story, and that's all there was to it.

Q. Did he tell you that you might have to testify in a hearing such as this one?

A. Well, now, we hadn't discussed that, I don't believe, at all.

Q. Do you have personal knowledge, Mrs. Collins, have you ever seen Mr. York observe any employee in the

lobby department taking a free lunch, to your personal knowledge?

A. Do I what, sir?

Q. Have you ever seen Mr. York see someone, yourself or any other person in the lobby department, take a free lunch?

[72] A. I really don't know. I couldn't say.

Q. The skill that you use being a lobby department employee, is it any different from being a lunch counter or lunch department employee? Do you do different things?

A. Well, as far as I'm concerned, it's practically the same thing, because we serve lunches, sandwiches, hamburgers, and all of this, and we serve barbecue where I came from in the lunch department, and, the only thing is it's just built different.

Q. How is it built different?

A. Well, the bakery and the lobby is together, see, and I've never worked—where I worked at 62 and No. 2, the bakery was separate from the lunch counter, and in this, they're combined.

Q. Do you prepare different types of foods, one versus the other?

A. Yes, sir, we just, you know, sort of make a plate lunch. You know, different things every day. We make up our own menu usually.

Q. Is the work more difficult in the lobby department than it is in the lunch department, in your opinion?

A. Well, to some extent, yes, sir.

MR. MARTIN: Pass the witness.

JUDGE NACHMAN: Any redirect?

REDIRECT EXAMINATION

[73] Q. (By Mr. Helms) Mrs. Collins, you testified a while ago when I was asking you questions, you testified that you cried while you were upstairs.

A. Yes, sir, I did.

Q. What caused you to cry?

A. Because I knew the Lord had answered my prayers. I had prayed that the Lord would let me hold my job,

and that I would sign nothing that was supposed to be saying something wrong, and that I will have my job. And I knew the Lord had answered my prayer, and I told Mr. York and the detective that I knew that He had answered my prayers, that I had done nothing wrong.

Q. Mrs. Collins, I believe you also testified, when you started talking about this, after you got upstairs for this interview, that they said something to you about getting $3.50 worth of chicken and only paying a dollar for it.

A. Yes, sir.

Q. Do you know whether or not there was any sort of basis for that question on their part?

A. I don't quite understand—

Q. Well, what kind of boxes are chicken put in?

A. Well, we had a large box and a small box to put chicken in, and the small boxes, we were out of.

Q. Now, when was that? Was that the day before when you were taking it over to the church dinner?

[74] A. Yes, sir, we had been out of them a good while. So, in order to carry it decent looking and everything, I put it in this large box.

Q. And is that large box—is there a standard price for that large box?

A. Yes, sir, it was for the larger orders of the chicken.

JUDGE NACHMAN: What is the price charged for that larger box? What do you get when you get the amount of food that's supposed to be in that box?

THE WITNESS: I believe—we don't sell too much of that where we are right now, and the prices sort of get away with me.

What I got was four pieces for a dollar, and I believe—I'm not sure, but I believe they're two ninety-nine —I really don't remember, sir. I'm sorry.

JUDGE NACHMAN: Is there a charge, say, like three dollars and a half for it?

THE WITNESS: No, sir, I don't think we have any special charge at this price, unless they just want some special pieces. You know, breasts or thighs, or something similar to that.

Q. (By Mr. Helms) Now, on the day of the questioning, after the interview was over, were you ready to go back to work?

A. Yes, sir, I would have worked.

Q. What did you do?

[75] A. I went home.

JUDGE NACHMAN: You went home because Mr. York told you to take the rest of the day off?

THE WITNESS: Yes, sir.

Q. (By Mr. Helms) How many hours did you miss that day?

A. I believe it was about four hours. I'm not sure. Something like that, because I think it was around 1:00, or a little after 1:00 or something like that, when I came down.

Q. Did you ever get paid for that four hours?

A. Yes, sir.

Q. Do you know why you got paid for the four hours?

A. No, sir, I never asked any questions about it.

Q. Was it in your regular paycheck?

A. Yes, sir. I got a regular 40 hour—

MR. HELMS: That's all I have.

MR. MARTIN: Just one or two more questions.

RECROSS EXAMINATION

Q. (By Mr. Martin) What time did you go to work on the day that this questioning occurred?

A. I believe—I'm not sure, but I believe it was around 10:00 or 10:30 or 11:00.

Q. OK.

Do you have a scheduled lunch break or lunch period?

A. No, sir, we don't have no certain time.

Q. What do you normally take for lunch?

[76] A. Well, it's really different times, you know. It's just how busy we are, and how many we have working.

Q. Do you always eat a lunch there?

A. No, sir, not always.

Q. How often would you take a lunch, or use the facilities of the company for a free lunch before the interview occurred?

A. Well, I really don't know. Some days I wasn't hungry and I wouldn't eat. Maybe I would take a drink.

Then, some days I might eat one vegetable or two vegetables or something like that. I don't know. Just—

Q. So, sometimes you did eat and sometimes you did not eat?

A. Yes, sir.

Q. Do you recall just about when the interview began? When did it occur?

JUDGE NACHMAN: You mean what time?

MR. MARTIN: Yes, sir.

THE WITNESS: I don't know exactly.

Like I said a while ago, I didn't look at the clock, but I believe it was somewhere around lunch.

Q. (By Mr. Martin) When is the busiest time for you during the day over at store No. 98 where you were working?

A. The busiest part of the day?

Q. Uh-huh.

Is it lunchtime?

A. Well, around 12:00, 12:30 or 1:00, I would say.

[77] Q. OK.

Was it before or after or during this busy part of the day for you that you were asked to go up into the lounge area?

A. Well, I guess it was somewhere during this time.

Q. During the busy part of the day?

A. Yes, sir, I really didn't notice the time. I couldn't say for sure.

Q. Well, what I'm trying to find, Mrs. Collins, did the work slack off? Did the people stop coming in because—

A. Well, I don't think so.

Mr. York let Edna come over and work in my place, see, while I went upstairs.

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DON HARDY

was called as a witness by and on behalf of the Respondent,

* * * *

DIRECT EXAMINATION

Q. (By Mr. Martin) Mr. Hardy, would you state your name and address for the reporter, please?
A. Don Hardy, 4522 Weingarten Street.
Q. And by whom are you employed, Mr. Hardy?
A. J. Weingarten Incorporated.
Q. And how long have you been employed by Weingartens?
A. Approximately eight and one half months.
Q. In what capacity.
A. Loss Prevention Specialist.
Q. Mr. Hardy, what are your duties as a Loss Prevention [80] Specialist?
A. As a Loss Prevention Specialist, I'm assgined to those area that might conceivably result in a loss a Weingarten facility. My duties include inspections of stores when a shrink, or a loss problem is discovered, trying to verify where the loss is.
My duties also include making recommendations about various ways stores are set up, prior to the store opening to prevent loss.
Q. In the investigation of losses, you investigate what types of incidents? Is it related to what, thefts only?
A. No, sir, all types of incidents of loss that occur.
Q. In connection with your duties, Mr. Hardy, are you armed with any sort of sidearm or weapon, anything of this nature?
A. No, sir.
Q. Do you have any sort of constituted authority from any law enforcement agency?
A. No, sir, not in connection with this employment.
Q. Before you were employed with Weingartens, had you had any experience in loss prevention activities?
A. Yes, sir.

Q. What was that?
A. The Kroger Company.
Q. How long were you employed there?
A. Approximately three years.
[81] Q. In the same capacity that you are with Weingartens?
A. No, sir, I was an investigator with Kroger Company.
JUDGE NACHMAN: Was it the same general type of duties?
THE WITNESS: Yes, sir, the same general type of duties.
Q. (By Mr. Martin) Do you have any employees under your supervision?
A. No, sir, I don't.
Q. Do you have any authority to hire or fire any employee of Weingartens?
A. No, sir, I do not.
Q. Have you ever been given authority to make recommendations concerning discipline for any employee of Weingartens?
A. No, sir.
Q. Does the—
JUDGE NACHMAN: If you caught an employee engaged in some act of dishonesty or pilferage, what would you do?
THE WITNESS: In the act, sir?
JUDGE NACHMAN: Yes.
THE WITNESS: Apprehension of that employee at that time.
JUDGE NACHMAN: All right.
Now, you've caught him.
What would you do?
THE WITNESS: I'd refer the man to my supervisor.
JUDGE NACHMAN: You could take no action on your own?
THE WITNESS: No, sir.
[82] JUDGE NACHMAN: All right.
Q. (By Mr. Martin) Does the company have any sort of policy—does it have a policy relating to your

activities in interviewing employees? Are you working under any sort of company policy or procedure?

A. Yes, sir.

Q. Would you describe what that is, please?

A. I don't know if I understand the question.

Q. My question is, do you have any guidelines when you interview an employee of the company, and if so, what are the guidelines?

A. Well, the guidelines—what type of particular interview?

Q. Are you instructed to advise any employee at the commencement of the interview of any particular matter? Do you have to identify yourself?

A. Yes, I have to identify myself.

Q. That's part of the company policy?

A. That's part of the company policy, yes.

Q. Do you have to advise him of the purpose of the interview?

A. No, sir.

Q. Do you have to inform him of any constitutional rights?

A. No, sir.

Q. Are you under any instruction from the company as to how you conduct the interview? Can you conduct the interview alone?

[83] A. Can I conduct an interview alone?

Q. Yes.

A. Yes.

Q. Is there a policy favoring or disfavoring this?

A. The policy generally favors conducting the interview by myself with the employee, with no other person present.

Q. If an employee that you are interviewing demands to end the investigation, what are you instructions in that regard?

A. To end the interview.

Q. Would you tell us briefly what caused you to be in the store No. 98 on June the 15th?

A. Yes, sir.

June the 15th, I believe, was a Thursday.

On Tuesday of that week, my supervisor, Mr. Hal Burnett instructed me to go to 98 and check out an allegation that a person in the lobby department at that store was taking money from the cash register.

He identified this person from his source of information and I don't know—

JUDGE NACHMAN: Did he give you a name?

THE WITNESS: Yes, sir, Leura Collins.

I went to this store on that day and went to the snack bar area, or the lobby department, and observed the operation of the department at around lunchtime.

[84] I went also on Wednesday at that same time and observed the snack bar area of the lobby department. I observed no removal of cash from the cash register, or no dishonest acts whatsoever, that I could see.

I returned to the store on Thursday and went to Mr. York, the store manager, and informed him that I had been in the store in an undercover capacity for two days, and I observed nothing of a dishonest nature going on in the lobby department.

At that time, on Thursday, it was around lunchtime. Mr. York and I had lunch together. Mr. York told me that he had been informed by one of the store employees that on the previous day, Leura Collins had taken $3 worth of chicken and only paid a dollar for this chicken.

Q. Did he identify the employee that furnished him that information?

A. He did at that time. He said that this employee was Jewell Moody.

Q. What did you do as a result of that information that Mr. York gave you?

A. After we finished lunch, I asked Mr. York to have Jewell Moody come to his office area where I could interview her regarding the information she had given to him.

JUDGE NACHMAN: Was this the Mrs. Moody employed in the lobby department?

[85] THE WITNESS: Yes, sir.

Q. (By Mr. Martin) Would you describe the area in which you conducted the interview of Mrs. Moody?

A. Yes, sir.

It's an open area over the lobby department, which is used as a manager's office, one portion of this area; and the inner portion of the area is used as an employee lounge, break area.

The area where I interviewed Mrs. Moody was at Mr. York's desk, the manager's office portion of this particular area.

Q. Are there any partitions in this portion—

A. No, sir.

Q. What transpired between you and Mrs. Moody? What was said between you and Mrs. Moody?

A. I asked Mrs. Moody if she had any knowledge of any dishonest acts occurring in the lobby area on the previous day, and she said yes, that she did; that another employee in that area—she was somewhat reluctant to identify her to me, but she did—another employee of that area had taken $3 worth of chicken, and only paid $1 for this chicken.

Q. Did she identify the employee?

A. Yes, she identified Mrs. Collins.

Q. OK.

Was there anything else said?

A. No, sir, not at that time.

[86] Q. What happened then, Mr. Hardy?

A. Mrs. Moody returned to work and I asked Mr. York to ask Mrs. Collins to come to the upstairs area over the lobby department.

JUDGE NACHMAN: Did you interrogate Mrs. Moody as to how she knew of this act she was reporting to you?

THE WITNESS: Yes, sir.

She told me she observed it.

JUDGE NACHMAN: Did she give you the details?

THE WITNESS: She told me that it was in the morning of the previous day, that—

JUDGE NACHMAN: How did she know it was $3 worth of chicken, that's what I'm getting at.

THE WITNESS: She said she observed this transaction.

JUDGE NACHMAN: What did she observe? Did she observe her putting the chicken into the box?

THE WITNESS: She said she did, yes, sir, at that particular time.

JUDGE NACHMAN: What I'm getting at, there's some testimony here that they used a large box to put a lesser quantity of chicken in.

Now, did you get information from her that would either verify or contradict that?

THE WITNESS: Well, at that time, I didn't know that the large box and the small box came into play.

[87] MR. MARTIN: I think, Your Honor, that the testimony later on that will be introduced will clear up this point.

JUDGE NACHMAN: All right.

At that point, you didn't know that there was this distinction between the large box and the small box?

THE WITNESS: No, sir.

JUDGE NACHMAN: All right.

Go ahead.

Q. (By Mr. Martin) Did Mr. York bring Mrs. Collins to the lobby—I mean, to the lounge area for you to question?

A. Yes, sir.

Q. What was said at that time?

A. Mrs. Collins came to the lounge area and we had a table arranged in the lounge area where three people could sit at this table, and Mr. York introduced Mrs. Collins to me.

Q. How did he identify you, do you recall?

A. No, sir, I don't recall.

Q. Did he say that were a detective?

A. No, sir, I believe he said I was from the security department.

Q. Of the company?

A. Yes, sir.

Q. Continue.

A. Mrs. Collins was seated at the table and I told her that I was checking into the situation that happened —that [88] occurred yesterday, and asked her if she had purchased some chicken from the store on that particular day, and she said yes, she had.

At that time I asked her if she had paid the full price of the chicken on that particular day, and she said she had.

I asked her if she had not, in fact, paid for—paid $1 for $3 worth of chicken.

At this point in the interview, Mrs. Collins said, "Shouldn't the union be in on this?"

At that time, Mr. York said—told her that it was a private matter between the company and herself, and I continued asking questions regarding the chicken, if she did not pay any less for the chicken than what it was actually worth.

JUDGE NACHMAN: She denied having paid less than the value?

THE WITNESS: Yes, sir.

During this questioning she said that on the previous day, she had gotten a large chicken box, but only put a dollar's worth of chicken in this box, because she said—and she sounded truthful about it, so I decided to go downstairs and verify that they were out of chicken boxes, the small chicken boxes on that particular day.

Q. (By Mr. Martin) Who did you talk to?

A. Mrs. Collins—I mean, Mrs. Moody.

[89] Q. What did she say to you?

A. She said that she remembered then that they were out of small chicken boxes on Wednesday, and I said, "Well, then, Mrs. Collins couldn't have gotten a small box of chicken. Any box she got would have had to have been a large chicken box."

And she said, "That's right."

And I said, "Well, did you see how many pieces of chicken she put in this box?"

She said, "Well, no, not really."

Well, at that point, it became apparent to me that we didn't have the information we thought we had in the first place. So, I returned to the area where Mr. York and Mrs. Moody were sitting and told them that I had verified this information from Mrs. Moody downstairs, and as far as I was concerned, the matter was cleared up.

JUDGE NACHMAN: In other words, you were convinced that there was, in fact, no act of dishonesty on Mrs. Collins part? At least, you couldn't prove it?

THE WITNESS: I don't know if there was any act of dishonesty or not, but at that point, I was in a place I shouldn't have been. I had no reason talking to the woman because, there was no dishonesty evident.

Q. (By Mr. Martin) Did the interview end at that point?

JUDGE NACHMAN: I didn't hear the last couple of words [90] you said.

THE WITNESS: There was no dishonesty evident, at that point.

Q. (By Mr. Martin) Did the interview end?

A. No, sir.

Q. Why did it continue?

A. Well, about this point, I believe—I don't know why—

At this point, I don't know why, Mrs. Collins had become emotional. She had tears in her eyes, and she said to myself, and mostly to Mr. York, "I have never taken anything from the company that I haven't paid for except for the free lunches." We continued the interview then because I didn't know that—this surprised me. Free lunches weren't—they weren't supposed to be getting free lunches as far as I knew.

Q. Did you ask Mr. York at that time anything about the lunches?

A. Yes, I said, "Joe, did you know—are they supposed to get free lunches?"

He said, "No."

Q. OK.

What did you do at that point?

A. Well, we continued to question Mrs. Collins about her free lunches, and started to take a statement regarding the amount and frequency of her eating free lunches in the store.

[91] Q. Had you determined in your own mind that it was a violation?

A. No, sir.

However, I was thinking this.

I decided I had better check to find out if there was a violation. She seemed too emphatic that it was something she was supposed to do, that I went to the phone and telephoned the supervisor, and asked him—the supervisor, Mr. Hal Burnett, and asked him to check out the situation for me, to find out if they were allowed to eat free lunches or if they weren't.

JUDGE NACHMAN: Did she tell you she had been doing this for 10 or 11 years?

THE WITNESS: She said she had been doing it for two years, since she came to that store.

JUDGE NACHMAN: She didn't tell you about the previous employment?

THE WITNESS: No, sir.

I didn't question her regarding her previous employment.

After I had called Mr. Burnett, I was still convinced in my mind that free lunches were wrong. I returned to the table and continued to take the statement, tried to determine the frequency of the free lunches, the amount of free merchandise that she had obtained from Weingartens Store No. 98, and was reducing this to writing when Mr. Burnett [92] called back. He had evidently checked with someone. I don't know who he had checked with. I didn't know at the time.

He said that evidently the employees had been allowed in some stores to have free lunches, and because of what he told me, I returned to the table and destroyed the statement that I was preparing.

Q. (By Mr. Martin) Were you writing the statement?

A. No, sir, I was writing it.

Q. Was the statement taken out of the typewriter at anytime before Mr. Burnett returned his called?

A. No, sir, it was—right after I returned to the table, after Mr. Burnett had informed me that in some stores some of the employees had been allowed to have free lunches—

JUDGE NACHMAN: Did he say whether that was the case at No. 98?

THE WITNESS: No, sir, he had not checked that to any extent.

Q. (By Mr. Martin) Did you ask Mrs. Collins to sign the statement at anytime during the interview?

A. No, sir, I never asked Mrs. Collins to sign that statement. The statement was still in the typewriter until Mr. Burnett called me back on the telephone.

Q. And after Mr. Burnett called you, what did you do with the statement?

A. I removed it from the typewriter. I think I put it [93] in my briefcase. I know I didn't leave it in the store. I put my typewriter back in my typewriter case, thanked Mrs. Collins for her time, and listened while Mr. York asked her if she wanted to take the rest of the day off. She was quite, presumably, emotionally upset. She had tears in her eyes.

Q. What did she say in reply to Mr. York's question?

A. She said she wanted to take the rest of the day off.

Q. Was there any discussion, to your knowledge, about pay for the day, the remainder of the day?

A. Not to my knowledge, no, sir.

Q. Was there any discussion at that time between Mr. York and Mrs. Collins about keeping the matter confidential?

A. Yes, sir.

Q. What was that?

A. Mr. York, if my memory serves me correctly, told Mrs. Collins that he wasn't going to discuss the matter with anyone in the store. If anyone talked about it—because we were trying to keep the think a private thing—that if anyone talked about it, she would be the one to do the talking.

Q. During the time that you were present with Mrs. Collins and Mr. York, did Mrs. Collins ever demand that—ever demand union representation?

A. No, sir.

[94] JUDGE NACHMAN: Well, what did she say about union representation, to your best recollection? Quoting her exact words as near as you can?

THE WITNESS: She said, "Shouldn't the union be in on this" at the onset of the interview when I started asking her about the difference between the price of the chicken that I thought she had taken, and the price she had actually paid.

JUDGE NACHMAN: Those were her exact words, "Shouldn't the union be in on this?"

THE WITNESS: I believe so, yes.

Q. (By Mr. Martin) Did you make any reply to that statement?

A. No, sir, I didn't.

Q. Did Mr. York make any reply?

A. Yes.

Q. What did he say?

A. He told her that it was a private matter between the company and her and that he didn't think that there was any need for the union to be present.

Q. Do you recall if he said, "No, you cannot have union representation."

A. No, he didn't say no. He didn't refuse. He didn't say, "No, you can't have the union up here."

Q. How many times was the union mentioned, do you recall, during the interview?

[95] A. Well, that I heard?

Q. Yes, sir.

A. I heard her ask for the union one time at the onset of the interview.

Q. How long did this interview last?

A. I think from 20 to 30 minutes.

Q. When did it commence, do you know?

A. Well, it was after—I didn't consult a clock or anything, but it was after—immediately after their lunch hour rush was over with, because store employees were still in this break area where the interview took place during the lunch hour, and we had to wait for them to leave before we could have a private area to conduct the interview.

JUDGE NACHMAN: That lunch rush is over probably at what time?

THE WITNESS: I think about 1:00 o'clock, sir.

JUDGE NACHMAN: So, the interview was shortly after 1:00 o'clock?

THE WITNESS: Shortly after 1:00 o'clock.

Q. (By Mr. Martin) Were you present at anytime when a statement or comment was made by anyone, by Mr. York or Mrs. Collins about anyone going to the restroom or to the bathroom?

A. No. I don't remember any statement—

Q. Did you inform Mrs. Collins at anytime during the [96] interview that as a result of the interview, that some disciplinary action might be taken?

A. No, I didn't inform her that I wouldn't, because I don't know if any disciplinary action can or will be taken as a result of any interview.

Q. At the conclusion of this interview, or any interview that you particpate in, is it your function to make a recommendation as to discipline that should be meted out?

A. No, sir.

JUDGE NACHMAN: You just gather the facts and report them to your superior?

THE WITNESS: Yes, sir.

MR. MARTIN: Pass the witness.

CROSS EXAMINATION

Q. (By Mr. Helms) Who is Hal Burnett, and what position does he hold?

A. The assistant director of the Loss Prevention Department.

Q. When you make a report, that report goes to Monroe Rochester, doesn't it?

A. No, sir.

JUDGE NACHMAN: Who is Monroe Rochester, or do you know?

THE WITNESS: He's a vice president—

JUDGE NACHMAN: I'm asking Counsel.

MR. HELMS: Vice President of Personnel.

JUDGE NACHMAN: Well, if that's important, let's have [97] it in the record and let the witness testify to it.

Is that who he is? Is that who Mr. Rochester is?

THE WITNESS: Yes, sir.

Q. (By Mr. Helms) Do you write a report which would go to a vice president?

A. Yes, sir.

Q. What vice president is that?

A. Joseph Patterson.

Q. OK.

Now, I believe you gave a figure of about $160 that she owed for lunches, right?

A. I didn't come up with that figure—I don't remember what figure. I did come up with—

Q. You came up with a figure, though.

A. Yes.

Q. A fairly substantial figure?

A. Fairly substantial, but I don't remember what figure.

Q. You and Mr. York calculated over a period of time as to how much the lunches were and as to how long they had gone on, and so forth? Right?

A. I asked Mrs. Collins—I don't remember Mr. York entering into the calculations. I asked Mrs. Collins how long these lunches, what frequency, what amount of the merchandise she had consumed and how often this had taken place, yes, sir.

Q. Now, what else did you talk to her about besides the— [98] about the chicken in the box and the free lunches.

A. Broad topics. That's all I talked to her about.

Q. You didn't say anything to her about stealing?

A. Yes, sir.

Q. What did you say to her about that?

A. I asked her if she had ever taken anything from the Weingarten Company, any money or merchandise that wasn't hers, and she denied it.

Q. Did you talk to her about ringing up the cash register?

A. Yes, sir.

JUDGE NACHMAN: You mean, ringing up short on the cash register?

MR. HELMS: Yes, sir.

MR. MARTIN: Is that the question now phrased, or was the previous question—

JUDGE NACHMAN: The question as asked was in the light of my—what I suggested. I thought Counsel meant, and he confirmed that is what he meant.

MR. MARTIN: Well, I didn't understand if the witness understood that.

Q. (By Mr. Helms) Did you accuse her of taking a dollar bill and some change and ringing up the change and pocketing the dollar?

A. No, sir, I didn't accuse no one.

Q. What did you ask her about on ringing the cash register?

[99] A. I asked her if she had ever taken any money from the cash register, or ever taken—with the situation that you just described, where say a dollar and fifteen or twenty cents was paid for an item, if she had ever taken and rang the dollar and kept the fifteen cents for herself.

But I never accused her of taking this money for herself.

Q. Did she show you her foot, or a foot that day? Did she stick out her shoe?

A. No, sir.

Q. You don't recall that?

A. No, sir.

Q. Do you know whether she did, or you just don't recall it?

A. No, sir, she didn't.

Q. You did tell her you were going to have her sign the statement, didn't you?

A. Sir?

Q. I said, you did tell her that you were going to want her to sign the statement?

A. No, I believe—

Q. Well, what did you tell her about the statement that you were writing up?

A. I believe she asked Mr. York if the statement—she said, I believe, if I remember right, she said—asked Mr. York, "What's he doing?" And, asked me what I was taking, and I said I was taking a statement. And

she asked Mr. York, "Am [100] I going to have to sign it?"

Q. What did Mr. York say?

A. I think he said, "I don't know if you're going to have to sign it or not."

Q. You generally have a practice of preparing a statement and having a person like that sign it, don't you?

MR. MARTIN: I object to the characterization of the person, "like that." It's not defined as to—

JUDGE NACHMAN: Well, he means the person who he is interviewing.

MR. HELMS: Yes, sir.

THE WITNESS: Yes, sir.

Q. (By Mr. Helms) That's standard procedure?

A. Yes, sir.

JUDGE NACHMAN: Well, that's the purpose of writing it up, is to get the person to sign it.

THE WITNESS: That's correct.

Q. (By Mr. Helms) York was present at all times when you talked to Collins?

A. That's correct.

Q. Now, you interviewed Moody at York's desk, is that right?

A. That's correct.

Q. But you took Collins back into the lounge area?

A. Some 15 feet from York's desk.

Q. Did other employees come in there while you were [101] conducting the interview?

A. No, sir.

Q. According to your testimony, the only thing that was said about union representation by this girl was, "Shouldn't the union be here?"

A. That's the only thing that she said regarding it whenever I was there.

Q. But you weren't there all the time?

A. That's true, too.

Q. She did get pretty emotional, didn't she? She cried?

A. Whenever I returned from the downstairs area and informed her that I had checked into the situation regarding the chicken boxes, well, she became emotional.

She had tears in her eyes. She wasn't a loud, wailing, screaming, crying—but there were tears in her eyes.

Q. Do you, in an interview or in an investigation like this, do you check on the employees as to what kind of financial condition they might be in or anything like that?

A. You mean a credit check?

Q. No, not a credit check. Do you review her personnel record, or—to see what kind of shape she might be in?

A. Other than talking to the employee about it, you mean?

Q. That's right.

A. No, sir, generally not.

Q. You don't know—when you were talking to her, you didn't [102] have any idea as to what her financial responsibilities were at all?

A. No, sir, I knew from talking to Mr. York that she may have been ill prior to the discussion.

Q. Before you talked to her, did you know that she had been a fairly longterm employee?

A. Yes, sir.

MR. HELMS: That's all.

JUDGE NACHMAN: Any redirect?

MR. MARTIN: Yes.

REDIRECT EXAMINATION

Q. (By Mr. Martin) Do you have instructions or a practice concerning taking statements from those individuals who occupy a position other than accused or suspected persons?

A. Yes, I do.

Q. And what is that policy or practice?

A. Well, I take a statement from many people that I talk to if I think that sometime at a later date, I might need to know what was said on this particular date.

JUDGE NACHMAN: Well, is it correct that you might interview people who at some later date might be

witnesses to somtehing, and you want to have a statement from that prospective witness?

THE WITNESS: Yes.

JUDGE NACHMAN: The person you interview is not [103] necessarily accused or suspected of doing something wrong?

THE WITNESS: No, I interview many people that are not necessarily—

Q. (By Mr. Martin) So, the significance of the statement does not necessarily indicate that you suspect a person of being guilty of any particular misconduct?

A. That's correct.

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JOE M. YORK

was called as a witness by and on behalf of the Respondent,

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DIRECT EXAMINATION

Q. (By Mr. Martin) Would you state your name for the court reporter, please?

A. Joe M. York.

Q. And your address?

A. 11737 East Tex Freeway.

Q. By whom are you employed, Mr. York?

[104] A. J. Weingarten.

Q. In what capacity?

A. As a store manager.

Q. How long have you been employed by Weingartens?

A. Six years.

Q. Have you always occupied the position as store manager?

A. Yes, sir.

Q. What store are you presently the store manager of?

A. Store manager at Store No. 98.

Q. How long have you been the store manager of that store?

A. Since opening, which is approximately two years.

Q. Do you know Mrs. Collins?

A. Yes.

Q. As an employee under your supervision?

A. As an employee.

Q. In connection with your duties, do you have any authority over those employees in the store as far as discipline is concerned?

A. Yes.

Q. What would that be?

Would you describe to the Judge your duties in that regard?

A. Well, I'm primarily responsible for the operation of the store. The people are responsible to me. I have department managers under me who in turn have employees [105] under them, is what I'm saying.

As far as everyone in the store, they're responsible either directly or indirectly to me.

Q. Do you have any authority over the discipline to be given to an employee under appropriate circumstances?

A. I do have the right to hire and fire people, with one exception; that being in cases of extreme theft or loss. It is the company policy that I, as a store manager, discuss this with my group, or district manager.

JUDGE NACHMAN: Before you take any action?

THE WITNESS: Before I take any action.

JUDGE NACHMAN: You still take the action, but—

THE WITNESS: Not necessarily.

I have the right to recommend in cases of theft—or I have to bring it to his attention, and he has to make the final decision as far as—if there's a case of dismissal.

Q. (By Mr. Martin) Were you in the store on June 15th of 1972?

A. Yes.

Q. Did you have occasion to talk with any of the employees about—strike that.

Did you have occasion to talk with Mrs. Moody about any of the activities of her fellow employees?

A. Yes.

That morning, Mrs. Nellie Garcia, one of my courtesy [106] booth operators, while I was in the courtesy booth,

told me, "Mr. York, Jewell was very upset in the lobby about something."

JUDGE NACHMAN: Jewell—

THE WITNESS: Jewell Moody, in the lobby department.

And she did not know whether to come talk to me or not to come talk to me. I asked her why, and she related to me that she had observed Leura Collins on Wednesday taking some chicken.

After closing the closing the conversation with Miss Garcia, I went over and talked to Jewell and asked her what she was, you know, getting at; or what the deal was about the chicken.

She told me that Mrs. Collins had been in about the time—or a few minutes before the store opened on Wednesday morning, and had got a big box of chicken and paid a dollar for it. And we closed our conversation.

A short while latter, Mr. Don Hardy came in, introduced himself. I had never met Don before. We have several security people in our company that we know, or don't know.

He introduced himself, showed me his credentials, and told me that he had been in my store Tuesday and observed my lobby department operation and again on Wednesday, and he had found no acts of dishonesty on Tuesday and Wednesday.

So, Mr. Hardy and myself decided to have lunch. We had lunch, and we talked about—this was when we talked about [107] my discovering any acts of dishonesty.

I brought up to him my—what I had found out that morning, or had been told that morning about the chicken.

After finishing lunch, we went upstairs and discussed it a few minutes, and then he asked me to ask Mrs. Jewell Moody to come upstairs.

I went back downstairs and asked Jewell to come upstairs. We came upstairs. We were in my office area, which is against one corner and faces out into the center of the store.

I told her that Mr. Hardy was with our security department and I would like for her to relate to him what

she had related to me about Mrs. Collins taking the chicken.

She was very reluctant but she went ahead and told him that Mrs. Collins had gotten a big box of chicken and paid a dollar for it.

So, Mr. Hardy asked her a couple of questions about the size of the box. It was determined it was the large size, which we call in our company a family-sized box; and we tried to determine the value of approximately $3.

Mrs. Moody returned downstairs, and Mr. Hardy asked me if we could talk to Mrs. Collins.

I went down and asked Mrs. Collins to come upstairs. We had raised a table—arranged a table in sort of the center of the room, away from the front part of my office and my desk, where it sits, where it could be private, [108] because no one likes to sit out in the open and talk to anybody.

Mrs. Collins came upstairs with me. I introduced Mrs. Collins to Mr. Hardy as the Weingarten security department. We all sat down.

I told her that Mr. Hardy would like to talk to her about a few things. Mr. Hardy began to ask her questions about the chicken box incident. Had she come in and made a purchase of some chicken, how much chicken, the size of the box.

Unknown to Mr. Hardy and me, we neither one knew about the—us being, as a store, out of the box size, the small size against the large size. This came up, you know, the value of a $3—if you had a big box, the value is roughly $3. How did you pay a dollar?

This was when we discovered about—she said she only —you know, three or four pieces of chicken.

Mr. Hardy excused himself for a moment and went downstairs and discovered about the—us not having any smaller boxes, and came back and told me and Mrs. Collins at the same time that the chicken incident had been cleared up; and we were sorry, but that it had been cleared up.

Q. (By Mr. Martin) Mrs. Collins—at anytime before this, had she ever mentioned anything about the union?

A. She had mentioned—let me see exactly when, now. [109] Just before, I think, Mr. Hardy went downstairs, we were beginning—Mr. Hardy was asking questions; and Mrs. Collins looked over to me and said, "Shouldn't the union be present?"

And my reply was, "Leura, I think it's kind of a private matter between us and the company, and yourself, and us, and I really think it should be kept that way. I really don't see the need for it, because we're just trying, you know, asking questions and maybe clear up a matter."

Q. What did she say in reply to that?

A. She accepted it. She didn't say, "No, Mr. York, I want the union," or anything like this. She accepted my answer.

Q. Then, what happened after your conversation with her about the union? Did Mr. York have any additional questions for her?

A. Mr. Hardy?

Q. Mr. Hardy.

A. I think this about when he went downstairs and verified the size of the box, and came back and told me and Mrs. Collins at the same time that we had not had the right size box, and that the matter had ben cleared up.

Q. What was said at this time, if anything, about free lunches?

A. Well, after Mr. Hardy said the matter about the size [110] of the boxes had been cleared up, Mrs. Collins, said, "Thank God," her prayers had been answered, and so forth, and that she had never taken anything from Weingartens except the free lunches. I looked up because free lunches is something that I wasn't aware of.

Mr. Hardy looks over at me and says, "What is free lunches?"

Q. To your knowledge, Mr. York, had any employees in the lobby department of Sore No. 98 ever received a free lunch while you were the store manager?

A. Not to my knowledge.

Q. Would you continue, then, with what was said about—by the parties at the interview.

A. OK.

Let's see.

Mr. Hardy began to ask Mrs. Collins questions about the free lunches, you know, if she—how many times that she—did she eat a week? Did she eat today and maybe not eat tomorrow, and maybe—this type of thing, and Mrs. Collins said, "Well, she might eat a piece of chicken today, or might eat a vegetable tomorrow. Some days she might not eat, or just—maybe just have a drink one day.

During this, Mr. Hardy went on and asked her a few questions, and in a few moments, he left the table where we were sitting and went to my desk which is approximately [111] eight or ten feet away, with a telephone, and made a phone call.

JUDGE NACHMAN: Did you know to whom he was talking?

THE WITNESS: At the time, I did not know who he was calling.

JUDGE NACHMAN: And you didn't hear what was said?

THE WITNESS: No.

JUDGE NACHMAN: All right.

THE WITNESS: He returned from using the telephone and sat back down and began to ask a few questions, and just about here, Mrs. Collins said, "Couldn't I have Billie Brockett present?"

I said, "Well, Leura, you know, it's still basically a private conversation between us, and we're just trying to clear up some matters."

So, she had a few tears in her eyes. She wasn't hysterical or what you would call an emotional person about it. She had some tears and this type thing, but not hysterical.

Mr. Hardy began to ask her about the number of times per week, and he was trying to figure out, maybe, if she ate two or three times a week any try to maybe come up with a dollar value, which I still don't know what pin-

point dollar value was ever put on it, because I, you know, didn't get that involved in it.

[112] Mr. Hardy was typing up a statement concerning, you know, the dollar value and what had transpired, to turn in the report.

Somewhere during the type of this, he received a phone call or was paged over the PA system. He excused himself and answered the phone, and came back and he said that Mr. Burnett, or whoever he had talked to—I don't remember who he said he talked to, now—had said that in some stores the people had received free lunches and in some stores, they had not. It was kind of a matter of discussion, and said we would terminate the interview.

So, Don said that he didn't have anymore questions or anything, and I asked—we all sat there for a moment. I finally got up and I asked Mrs. Collins if she would like to be off the rest of the day, because she, you know, was still tearful and emotional, and I thought to myself, well, maybe she would like to be off or wouldn't like to be embarrassed. I wouldn't like to do anything to embarrass anybody.

I asked her if she would like to be off. She said yes, so we all went downstairs and Mrs. Collins left and went home.

Q. Did you know that there was a company policy regarding free lunches in the lobby department?

A. No.

[113] Q. Before the day of the interview?

A. To my knowledge, that has never been a company policy.

Q. Well, I'm asking you, do you know if a policy existed one way or the other about lunches in the lobby department?

A. Rephrase that—

Q. To your knowledge, was there a policy at the company regarding free lunches, or paid lunches, as the case might be, for employees in the lobby department?

A. They did not receive the lunches. There is a policy that says they do not.

Q. There is a policy, they do not.

A. They do not.

Q. Does your store have a lunch counter operation of any description?

A. My department is set up as a lobby department and not a lunch counter.

Q. On the day that your store was opened, were you present?

A. The day of the opening?

Q. Yes.

A. Yes.

Q. Do you know whether or not there were any employee orientation sessions conducted before the store opened?

A. Yes, sir.

Q. Were you present when these occurred?

A. I wasn't present in the presentation.

[114] Q. Do you know if there is a policy regarding what is said to these employees of the lobby department about lunches?

A. Yes.

Q. What is that policy?

A. There is a company policy that, the day before, or two days before, each department holds a presentation. You cover the rules, regulations, and everything. It's a company policy that you cover rules, regulations, and policies concerning every department, and a meeting is held for every department.

Q. You do not know, then, from your personal knowledge whether a statement was made to these employees about lunches or not?

A. No.

Q. During the course of this interview with Mrs. Collins, was there any comment made about going to the restroom or to the bathroom?

A. Not to my recollection.

Q. Did you tell Mrs. Collins that if anybody goes to the bathroom, "all three of us go?"

A. No.

Q. Mr. York, if it had been determined in your mind that Mrs. Collins had done something that constituted

misconduct, would you have had authority to discipline her as a result of that interview?

[115] A. If it's—if you're talking about misconduct.

Q. I'm talking about theft.

A. We're talking about theft.

I would have to have consultation with my district manager concerning theft.

Q. Would you make the final decision on that?

A. He would.

Q. Did anytime in the interview, you inform Mrs. Collins that as a result of what she said, that her job might be in jeopardy?

A. No.

Q. Or that her job was on the line or anything of this nature?

A. No.

Q. What was your purpose of being in the interview? Did you ask questions?

A. I don't think, to my recollection, that I asked any questions about the chicken or the lunches. I think probably the only question that I might have asked is, you know, "is everybody eating lunch on me," or something like that, indirectly.

Q. Did you have any other purposes—what was your purpose in being in the meeting between Mr. Hardy and Mrs. Collins?

MR. HELMS: Objection.

JUDGE NACHMAN: You may answer that.

[116] Q. (By Mr. Martin) The question is, what was your purpose in being there while Mr. Hardy was interviewing Mrs. Collins?

A. Well, as the store manager, I felt that it was my store, and as a management right, I felt I should be there, or have that right as manager, to rephrase that.

Q. Following the interview that you had with Mrs. Collins, did you discuss with any other employee of the lobby department the topic of free lunches?

A. I talked to Edna Odoms, the department manager, about free lunches.

Q. What did she say?

A. We had a discussion about whether they were or were not receiving free lunches?

Q. What did she say?

A. She said they were.

Q. What did you tell her?

A. I immediately told her, as the store manager, that there would be no free lunches, that it was a company violation, that no one receives free lunches, or are to receive any merchandise that is not paid for.

Q. Did she indicate to you that she had any knowledge of this policy before you informed her?

A. Repeat that.

Q. Did she say anything at all about her prior knowledge, her knowledge of either company policy, either for or against [117] having lunches at this time in the lobby department?

A. No.

Q. How was the—

JUDGE NACHMAN: She thought it was perfectly proper for these employees to get free lunches?

THE WITNESS: She did not know, really, one way or the other.

JUDGE NACHMAN: But she knew that it was going on and did nothing to stop it?

THE WITNESS: Right.

Q. (By Mr. Martin) Did you ask her if she, herself, was partaking of free lunches?

A. She was.

Q. Did you ask her?

A. I asked her.

Q. And what was her reply?

A. That she was.

Q. Was any—

JUDGE NACHMAN: I assume that she told you that she thought she was entitled to them.

THE WITNESS: No, sir, she did not say that she thought she was entitled to them.

JUDGE NACHMAN: Well, I mean entitled to them under company policy.

Was she telling you that she was doing something—

[118] knowingly doing something wrong?

THE WITNESS: No, I don't think that she was telling me that she was—that she felt it was wrong. She was just doing it.

JUDGE NACHMAN: Because she thought it was the practice in the store?

THE WITNESS: Right.

Q. (By Mr. Martin) To your knowledge, has there been any disciplinary action taken against any employee in the lobby department for taking the lunches before you found out?

A. There has been no action taken on anyone.

JUDGE NACHMAN: But you immediately stopped the practice?

THE WITNESS: I stopped the practice then, because—

Q. (By Mr. Martin) Why did you stop the practice?

A. Because it's not a company policy that you receive free lunches.

MR. MARTIN: Pass the witness.

JUDGE NACHMAN: The company takes a pretty dim view of employees they find are engaging in thefts and other acts of dishonesty, don't they?

THE WITNESS: As a store manager, I don't think they do.

JUDGE NACHMAN: You don't think they do?

THE WITNESS: No, sir.

[119] JUDGE NACHMAN: Go ahead.

CROSS EXAMINATION

Q. (By Mr. Helms) Are you acquainted with the contract between Weingarten and the Retail Clerks?

A. Yes. To a degree.

Q. Have you ever read Article 4 on discharge discrimination, especially Paragraph B about the warning notice that has to be given to the employees before discharge?

A. To give you an honest answer, it has been quite sometime since I have sat down, and you know, read through it.

I do know that you—for dismissal, it is a policy that we have to write up an employee on the grievance form at least once before they can be dismissed.

Q. However, you don't have to write them up for certain things, do you?

A. No, sir.

Q. But, anyway, you follow the policy of the contract, whatever it is?

A. Yes, sir.

Q. Just about the time of the interview, now, you testified, Mr. York, that twice during the interview, Leura Collins at least had something to say about a union representative being there, and at one time, I believe you testified that she asked if she couldn't have Billie Brockett.

Billie Brockett is an employee in your store?

[120] A. Yes, sir.

Q. And I'm sure you know that Billie Brockett is the union steward there?

A. Yes.

Q. Isn't it true that Mrs. Collins, just before the end of the interview, asked again for Billie Brockett to be present?

A. She asked for Billie Brockett's presence one time, sir.

Q. She requested representation just about the end of the interview, too, didn't she?

A. No, sir, the only time she asked for—she asked for Billie Brockett to be present, couldn't Billie Brockett be present.

Now, I wouldn't consider it towards the end.

Q. How many times did she ask for representation during this interview?

A. She didn't ask for representation.

Q. All right.

We'll put it, exactly what she said.

You testified that once she said, "Shouldn't the union be here."

A. Right.

Q. Then, another time, she asked if she couldn't have Billie Brockett there?

A. Yes.
[121] Q. Did she ask any other time about Billie Brockett, or the union being present?
A. No, sir.
Q. Just twice?
A. Twice.
Q. I believe you made a statement, not in this hearing, that Hardy, Don Hardy told Collins that he wished the interview kept confidential.
A. I didn't understand—
Q. I say, you have made the statement outside this hearing room that Don Hardy said at the interview that Don Hardy told Collins at the interview that he wished the interview to be kept confidential.
A. I still don't understand.
Q. Well, haven't you made that statement?
A. No, sir.
Q. And it's your testimony that Mrs. Collins asked to go home that day, right, after the interview?
JUDGE NACHMAN: I don't think the witness so testified.
THE WITNESS: No, sir.
I asked Mrs. Collins, myself. I asked Leura, you know, would you like to go on home, be off this afternoon, go on home.
MR. HELMS: All right.
THE WITNESS: She replied yes.
[122] MR. HELMS: Would you indulge me, please, sir, just a minute.
Q. (By Mr. Helms) All right.
You didn't tell her to take the rest of the day off?
A. No, sir, I asked her if she would like to be off.
JUDGE NACHMAN: After she indicated she would want to, you told her she could do it?
THE WITNESS: Yes, sir.
Q. (By Mr. Helms) All right.
Do you know about how many hours were left in that day on that day?
A. Approximately four.
Q. I show you this memorandum and ask you if you've ever seen a copy of it?

A. I've never seen a copy of anything like this.
Q. All right.
Do you know what this memorandum concerns?
A. The four hours.
Q. Do you know that Leura Collins was paid for those four hours on June the 15th, that she—after the interview, whether she at least left the store and went home or wherever she went?
A. I have been told that she has been paid.
Q. By whom have you been told?
A. Mr. Perry, because they handled it through the [123] personnel department.
Q. Well, you knew that there was a grievance filed about that?
A. Yes.
Q. And the company did pay the four hours?
A. Yes, sir.

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JOE PERRY

[126] was called as a witness by and on behalf of the Respondent,

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DIRECT EXAMINATION

Q. (By Mr. Martin) Mr. Perry, would you state your name and address for the record, please?
A. Joe Perry, 1102 Telephone Road.
Q. And by whom are you employed?
A. Weingartens.
Q. In what capacity?
A. Assistant Director of Industrial Relations.
Q. Have you always been in that capacity with the company?
A. Yes, sir.
Q. How long has that been?

A. A little over eight years.

Q. Would you describe briefly for the Judge what your duties are in connection with personnel?

A. Yes, sir.

I work under the supervision of the Vice President of Personnel, and Industrial Relations; and act as his assistant to all matters pertaining to labor relations, recruiting, training, developing of personnel, wage and hour, salary, wage administration. That sort of thing.

Q. Are you involved in employee grievances?

A. Yes, sir, I am.

[127] Q. What is you connection with employee grievances? What authority or jurisdiction do you have?

A. Well, generally, I act as a middle man pretty much between—after a grievance is progressed through the steps of going through the store manager and the group manager, I would normally, at that point, if it has not been settled satisfactorily, then at that point I would get into discussion with the union; and generally, Mr. Phillips, James Phillips.

Q. Do you see these grievances? Ever see them physically?

A. Yes, I see all grievances that are filed and ultimately come across my desk.

Q. How many stores are under your bailwick?

A. All stores, 100.

Q. One hundred?

A. One hundred.

Q. Do you know if there was a policy regarding free lunches for lobby department employees?

A. There is no policy of free lunches for any lobby department employees.

Q. Would you tell us briefly the difference between a lunch department and a lobby department?

A. Well, without being able to actually show you, I guess the best description would be that the lobby department is a considerably more sophisticated type of sales arrangement, [128] in that in the old lunch type of application, it was a kind of a fry station where they normally had a steam table. Normally, the configuration of the equipment was such that they may have a

slicer, a hotplate, or a grill where they normally made hamburgers and whatnot.

Generally, it was a type of a quick-fry thing, generally for consumption there at the counter; predominantly for consumption right there on the premises at stools or small tables.

Over a period of years, the application has evolved to where we have gone now to a new type of operation, which is the lobby operation.

It differs probably most from the lunch operation in that most of the food is prepared, first of all, in greater quantities; prepared for take-home more than consumption, I think, on the premises; but geared to specialty type items such as whole barbecued chickens, different types of kosher foods; salamis, cheeses, fishes, pickles, certain types of breads, imported New York cheeses, this type of thing; and additionally, the lobby departments have a lot of sophisticated types of equipment attached to them.

The thermal ovens which can cook merchandise in a matter of moments, where in a conventional oven, it would take, say, an hour. Different types of slicing, weighing equipment, and in some of the larger ones, bakery operations, [129] where the bread is actually baked in the ovens there, and are prepared, made up, baked there in the ovens and displayed and sold directly from the lobby operation.

Q. Is there any difference between the level of skill required for employees that work in the lunch counter as against the lobby department?

A. Yes, considerably greater skill is required in the lobby by virtue of the fact that—for example, the preparation of 15 or 20 pounds of salads.

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[131] Q. In those stores where a lunch counter continues to exist, what is the policy there regarding lunches?

A. That the employees do receive a meal a day. That policy, of course, has evolved over the last—well, you know, ever since I've been with the company, and I under-

stand it's been in existence even back prior to the time I came with the company.

Q. Does the company have a procedure or format they follow orientating their employees when they open up a new store?

A. Yes.

Q. What is that?

A. Well, generally—of course, when we open a new store, we open it with a team of people. Most of the individuals that open the store don't ultimately stay with that store. I'm talking about the management, the supervisory people, and they'll generally come in several days before the store opens, train all the people as to the specific duties that they're going to be performing. We will orientate them in terms of what the policies will and will not be.

Each store, of course, has a little different configuration, the parking is different, and you have to go to some [132] length to explain to employees where to put their parcels, purses, where to park, where and where not to be in certain areas of the store, because they're new.

We have wine sections in some, and some we don't have wine. In some, we sell beer, and in some we don't sell beer. Some we sell liquor, some we don't.

So, we generally have meetings with the respective department, and the supervisor of the department conducts the meeting and explains to the employee generally what would be expected of him.

Of course, at that time, in addition to just the general policy, we have managers for all the departments, training managers, that spell out precisely what the policies are for that particular department at the time we open because of the confusion of so many people on a grand opening.

Generally, our policy is to go into some depth about the policy because most of the people in the clerk positions are new. We hire generally at the location where we open the store. We may transfer people, but it's only in the key positions.

Q. Do you know whether or not it is part of the orientation of employees in the lobby department to advise

them that no, there are no free meals when the store opens?

A. Yes, it is.

[133] Q. Do you know whether or not from your personal knowledge that such an instruction was given when Store No. 98 opened?

A. To my best understanding—

JUDGE NACHMAN: That wasn't the question.

Do you know of your personal knowledge?

THE WITNESS: If I was there?

No, sir, I was not there.

JUDGE NACHMAN: You really don't know. You only know what somebody else told you?

THE WITNESS: Right. I know they were supposed to.

Q. (By Mr. Martin) Do you know who the person was that was responsible for this type of orientation for the lobby department?

A. I'm sorry. Would you repeat that?

Q. Do you know who it was that supposed to give the instruction to the lobby department employees about their responsibilities, the lobby—

A. At store 98, sir?

Q. Yes.

A. Yes, Mr. Spector, Mickey Spector.

Q. Is Mr. Spector still with the company?

A. No, sir, he's not.

Q. So, you have not had an occasion to talk to him about store 98's opening?

A. No, sir.

[134] MR. MARTIN: I'll ask the reporter to mark for identification Respondent's Exhibit 2, (a) and (b), consisting of two pages, for identification.

(The documents above-referred to were marked Respondent's Exhibit Nos. 2(a) and 2(b) for identification.)

Q. (By Mr. Martin) Mr. Perry, I'll place in front of you Respondent's Exhibits 2(a) and (b).

Can you identify that, please?

A. Yes, sir.

This is a segment of the training manual of the lobby department.

Q. Is there—what portion if any of this exhibit (a) and (b) refers to the lunch aspect of the lobby department?

A. It would be Paragraph 1 and 2, located—Paragraph No. 1 located and beginning at the bottom of Page 3, and Paragraph No. 2 at the top of Page 4.

MR. HELMS: I didn't quite understand, Neil—

JUDGE NACHMAN: What portion of this exhibit, R-2(a) and (b) for identification, deals with the question of lunches?

His answer is Paragraph at the bottom of Page 1, and Paragraph 2 at the top of Page 2.

Q. (By Mr. Martin) Is there any particular sentence that prohibits free lunches for lobby department employees, and if so, would you indicate where that is on Respondents (a) and (b)?

[135] JUDGE NACHMAN: I will assure you that I can read it.

MR. MARTIN: OK.

I move that Respondent's 2(a) and (b) be placed into evidence.

JUDGE NACHMAN: Any objection?

MR. HELMS: No, sir.

JUDGE NACHMAN: Respondent's 2(a) and (b) will be received.

(The documents heretofore marked Respondent's Exhibit Nos. 2(a) and 2(b) were received in evidence.)

Q. (By Mr. Martin) To your knowledge, Mr. Perry, have there been any other instances brought to your attention where employees of a lobby department are receiving free lunches besides—

JUDGE NACHMAN: You mean, in any other store?

MR. MARTIN: Besides Store No. 98.

THE WITNESS: No, sir.

Q. (By Mr. Martin) Is there a policy of the company regarding discipline to be given to employees determined to be guilty of theft or dishonesty?

A. Well, I'm not sure how to answer the question.

Yes, there is a policy.

Q. Well, what is that policy? Describe as you can as to—

A. Well, I would say that—of course, that would depend upon the circumstances. Normally, in my opinion, if an [136] employee was guilty of theft, gross theft, we would probably look into the matter and terminate the employee. We would not want an employee working for us that was stealing from us. I think it would depend upon the circumstances. Stealing is stealing an apple.

JUDGE NACHMAN: Really, you don't mean probably. If you determined it to be a fact that an employee had stolen by ringing up 15 cents on the register when the sale was a dollar and fifteen cents, you would fire him, wouldn't you?

THE WITNESS: Well, I probably would consider that, yes, sir.

However, I known instances where there have been employees who have been with the company for a long, long time that we have not taken that severe an action to terminate them.

Q. (By Mr. Martin) What kind of a situation would not result in termination if you determined that an employee was guilty of theft?

A. Well, I think most of these situations go to the—a man for example who stole a bottle of catsup out of the warehouse, or walked out of the store with a can of peas in his pocket that has 15 or 16 years service. We have not fired this individual even though he admitted he did take a can peas or a bottle of catsup or whatever it was, because that's [137] been Weingartens philosophy, and Weingarten people have historically taken a very liberal philosophy about that sort of thing, where length of service was involved.

Q. Have you ever informed Mr. Phillips of the Retail Clerks Union of this philosophy or this policy?

A. Well, he would know of it because Mr. Phillips and I speak regularly concerning matters that involve violations of all types of policies of Weingartens as well as violations of the union contract.

Q. Have you ever had an occasion to talk with Mr. Phillips about employee, or employees, who have been determined to be guilty of theft and those individuals were not terminated?

A. Well, they were guilty as far as the company was concerned, but I think there was some question as far as the union was concerned, and because of the fact that we may not could have substantiated it as strongly as we would have, we've possibly not taken the termination action.

Q. Have you ever informed Mr. Phillips that employees that have been determined by the company to be guilty of theft would be automatically terminated?

A. Depending on the circumstances, certainly. If he knows of somebody that is definitely stealing from us, and the circumstances are such that it involves quite a lot of money, he knows for sure that we would terminate this type of individual.

[138] Q. My question is, is more precise than that.

My question is, have you ever informed Mr. Phillips that employees determined by the company to be guilty of theft as a matter of company policy would automatically terminated?

A. Well, certainly not. He would know better than that.

Q. How would he know?

A. Because we have not terminated people on many occasions where we probably should have, or could have under the circumstances.

Q. Where Mr. Phillips was involved?

A. Certainly.

Q. Were you personally informed of that?

A. Pardon?

Q. Were you personally—where you personally discussed the matter with him is what I'm asking?

A. Yes.

Q. In connection—strike that.

MR. MARTIN: Pass the witness.

JUDGE NACHMAN: Cross examine?

CROSS EXAMINATION

Q. (By Mr. Helms) Mr. Perry, what distribution is made of this policy memorialized here in Respondent's Exhibits 2(a) and 2(b).

A. It would be sent to all store managers, supervisors, [139] and to all lobby managers.

JUDGE NACHMAN: Is it available to employees generally?

THE WITNESS: Yes, sir, it's in the lobby department. We have a copy there in the store for the store manager and also a copy for the lobby manager. She uses the manual in connection with training. She has two copies, in fact. One to use in training, the other for her own personal copy.

JUDGE NACHMAN: Well, how about the rank and file employee there, the salesperson? Do they have access to this manual?

THE WITNESS: Yes, sir, they sure do.

JUDGE NACHMAN: It's not restricted to the use of supervisors?

THE WITNESS: Oh, no, it's for the salesperson as a basis for training.

JUDGE NACHMAN: All right.

Q. (By Mr. Helms) All right.

Now, on these discussions that you testified that you had with Mr. Perry about people who the company considered had stolen something where you didn't discharge them, that's where you just didn't have the proof, right? Where you had discussed the situations with Mr. Phillips and you didn't discharge the employee, you just flat didn't have the proof sufficient, you thought, to go ahead and take [140] that action, is that right?

A. You mean my discussion with Mr. Phillips?

Q. Yes, uh-huh.

A. In the company's mind, we thought we had the proof.

Q. Yeah, but when you talked to the union about it, you felt that your proof, the better part was to leave the people alone?

A. If there were doubts, yes.

Q. Yes, sir.

JUDGE NACHMAN: Would this be a correct statement, Mr. Perry, that if you had absolute proof that a person was stealing, even though it was only a small quantity of materials, small amount of money, you actually caught them with the money, a marked bill, on that you would discharge without a question?

THE WITNESS: I would recommend it, yes, sir.

JUDGE NACHMAN: But if the circumstances were such that you were convinced in your own mind that the employee was guilty but you didn't feel the proof quite stacked up to enable you to prove it, that's the time that you would not take the discharge action, is that a correct statement?

THE WITNESS: Yes, sir, that is true.

However, there have been instances that I pointed out to you where there has been no question where the employee has admitted the fact that they had taken, and the item was [141] a small insignificant amount of money, but yet the employee had taken the items, had such long service with the company that we have taken no action. That's a philosophy that's—of the Weingarten people.

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[142] LEURA COLLINS

was recalled as a witness by and on behalf of the National Labor Relations Board,

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DIRECT EXAMINATION

Q. (By Mr. Helms) Mrs. Collins, directing your attention to the time that you were employed at Store No. 98, at anytime were you shown by any person there what purported to be a copy of company rules or policies and—

[144] THE WITNESS: I said that I had never seen that or anyone had never told me that we wasn't supposed to get our lunch.

Q. (By Mr. Helms) Now, Mrs. Collins, you've been here in the room while Mr. Hardy and Mr. York testified, is that not right?

A. Yes, sir.

Q. And you've heard this testimony?

A. Yes, sir.

Q. Mrs. Collins, I want you to tell the Judge, to the best of your recollection, how many times you mentioned Billie Brockett or a union representative to Mr. York, and what you said to him in connection with mentioning a union representative or Billie Brockett during the interview on June 15th?

A. I asked Mr. York several times if I could have Billie Brockett present, the union stewardess, and he told me no, that's why he was there.

Later on, I asked him, I would say at least three or [145] four times, could I have a union representative or Billie Brockett, and he said about the second or third time I asked him, he said, "Let me put it to you like this. If you go to the bathroom, we all three go."

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[147] CROSS EXAMINATION

Q. (By Mr. Martin) Mrs. Collins, you said that Mr. Hardy, after he was off the telephone returned and indicated to you by telling you or Mr. York that she was—that you were entitled to free lunches, is that your testimony, that, "She did do anything wrong, that she should get these free lunches."

A. No, he said that that was—had been the policy.

Q. To get free lunches?

A. That we got our free lunches, yes, sir.

Q. Did he mention anything about this store, 98?

A. No, sir, he just spoke it in those words.

Q. How many times did Mr. Hardy go downstairs, do you recall?

A. Well, as well as I can remember, the one time.

[148] Q. The one time?

A. Yes, sir.

Q. Would you tell the Judge, then, how it's possible that Mr. Hardy could go downstairs to ask about lunches when it was not until he returned from downstairs that the subject of free lunches was mentioned by you?

A. I didn't quite understand what you mean.

Q. Well, isn't it a fact that the first time the lunches came up, and the question, was when Mr. Hardy gave you the statement that it was OK with the chicken, and you said, "Well, that's right, because I've never done anything—taken anything from the company except my free lunches."

A. No, sir, it was when, you know, he was asking me questions about taking things from Weingartens and not paying for it, and I told him myself that I had never taken anything from Weingartens except my lunch and didn't pay for it.

Q. Then, it's your testimony now that he went downstairs afterwards?

A. Really, I'm not going to say, because I really can't remember if it was before or after.

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GENERAL COUNSEL'S EXHIBIT 2

AGREEMENT

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ARTICLE 1. *Recognition of the Union and Bargaining Unit*

A. The Employer recognizes the Union as the sole collective bargaining agent with respect to work, rates of pay, hours, and all other terms and conditions of employment for the appropriate bargaining unit herein established and described as follows:

> All employees in the J. Weingarten, Inc., retail stores, excluding all Korner Pantry type stores, located in the Texas Counties of Harris, Brazos, Waller, Fort Bend, Brazoia, Grimes, Montgomery, Liberty, Chambers, Galveston, Hardin, Jefferson, Jasper, Newton, and Orange, excluding store managers, assistant store managers, management trainees, meat department managers, employees working in the meat department, employees in the delicatessen departments in those stores where the delicatessen department is consolidated with the meat department, nonfood department managers, nursery center employees, employees in the stamp redemption centers which are located physically apart from the Employer's retail grocery stores, office clerical employees who work separately and apart from the retail grocery stores, professional employees, guards, watchmen, and supervisors as defined in the Act.

B. The Employer agrees not to enter into any agreement or contract with the employees, written or oral, individually or collectively, which in any way conflicts with the terms and provisions of this Agreement.

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ARTICLE 4. *Discharge and Discrimination*

A. The Employer shall not discriminate against an employee for upholding Union principles, serving on a

committee of the Union or any organization affiliated therewith.

B. An employee may be discharged for proper cause, and the Employer shall give notice in writing of such discharge to the Union. The Employer shall not discharge any employee without proper cause and shall give at least one (1) written warning notice of the specific complaint or complaints against such employee to the employee and to the Union, except that no warning notice need be given to an employee, before discharge, if the cause of such discharge is dishonesty, drunkenness, falsification of application for employment (discharge for falsification of application of employment must be within sixty (60) days from date of hire), recklessness resulting in a serious accident while on duty, or refusal of any employee to accept a job assignment.

Warning notices shall be void after six (6) months from date of issue.

The Union may thereupon file a written complaint with the Employer within seven (7) days after the Union receives notice of such discharge. Said complaint must be taken up within seven (7) days from the date it is filed with the Employer, by the Union's representative and the Employer's designated representative, and it may be referred to the Board of Arbitration in the event the Union and the Employer's designated representative fail to reach an agreement. Should the Board determine that it was an improper discharge, the Employer shall reinstate the employee in accordance with the finding of the Board of Arbitration.

C. Upon receipt by the Union from the Employer of a warning notice or Corrective Action Record, an employee who feels that such charge was unfair or unwarranted shall have fifteen (15) days from receipt by the Union of such notice, to file a grievance concerning the Employer's action.

ARTICLE 15. *Management Rights*

The management of the business and the direction of the working forces, including the right to plan, direct,

control, expand, reduce and terminate store operations, hire, suspend, or discharge for proper cause, transfer or relieve employees from duty because of lack of work or for other legitimate reasons, the right to study or introduce new or improved production methods or facilities and the right to establish and maintain rules and regulations covering the operation of the stores, a violation of which shall be among the causes for discharge, are vested in the Employer; provided, however, that this right shall be exercised with due regard for the rights of the employee and provided further that it will not be used for the purpose of discrimination against any employee and provided further that this right is not in conflict with any other provision of this Agreement.

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ARTICLE 18. *Dispute Procedure*

A. The Union shall have the right to designate store stewards for each store.

B. Should any differences, disputes, or complaints arise over the interpretation or application of the contents of this Agreement, there shall be an earnest effort on the part of both parties to settle such promptly through the following steps:

Step 1. By conference between the aggrieved employee and/or store steward, Union business representative, or either, and the manager of the store.

Step 2. By conference between the Union business representative and/or store steward and the District or Zone Manager.

Step 3. By conference between an official of the Union and the President of the Employer or his designate.

Step 4. In the event the last step fails to settle satisfactorily the complaint, it may be referred to arbitration by either party.

C. In the event the parties cannot agree upon the selection of an arbitrator within fifteen (15) days from

date of referral of the controversy to arbitration, the arbitrator shall be selected in the following manner.

The Federal Mediation and Conciliation Service shall be jointly requested by the parties to name a panel of seven (7) arbitrators. The parties shall then choose the arbitrator by alternately striking a name from the list until one (1) name remains as the arbitrator chosen by the parties and empowered to arbitrate the dispute.

The arbitrator shall be authorized to rule and issue a decision and award in writing on any issue presented for arbitration, including the question of the arbitrability of such issue. His decision and award shall be final and binding upon the parties to this Agreement. Where more than one employee is a part of a common grievance, it shall be heard as a single grievance. The fees of the arbitrator shall be borne one-half (½) by the Union and one-half (½) by the Employer party to the arbitration.

The arbitrator shall have no power to add to, subtract from, alter, amend, modify or project beyond its meaning any of the terms and provisions of this Agreement.

The time limit set forth in this Article may be extended upon mutual agreement of the parties.

D. No grievance will be considered or discussed which is presented later than fifteen (15) calendar days after such has happened excepting for any and all claims involving wages, which may be presented within six (6) months. Grievances that have progressed through Step 1 of the dispute procedure must be submitted in writing to be considered in Step 2.

E. The parties agree that grievances may arise of a general nature affecting or tending to affect several employees, and that such grievances may be initiated at any of the above mentioned steps deemed appropriate by the parties.

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RESPONDENT'S EXHIBIT 1

RETAIL CLERKS UNION, LOCAL 455
AFL-CIO

[LABEL]

For union office use only
Company—J. Weingarten

GRIEVANCE FORM

1. Date form filled out—June 20, 1972.
2. Member's name—General Grievance.
3. Member's Address & Phone No.—.
4. Company—J. Weingarten. Store No. 98. Address—11737 Eastex Freeway, Houston, Texas 77016.
5. Date of Grievance—June 16, 1972. Store Steward—Billie Brockett.
6. Details of grievance giving names, dates, times and all important data—The employees in the Lobby Department of Weingarten #98 have always received their lunches and drinks free, as of Friday, June 16, 1972 this practice was discontinued. This is a reduction in benefits that these employees are entitled to.
7. Settlement Requested—That these employees be given their lunches and drinks as it has always been done in the past.
8. Date grievance was discussed with Mgr. If it has not been discussed so state here—
9. Store Mgr's Name—Mr. Joe York. Supervisor's Name—Mr. John Blair.

10. Member's Date of Employment—Full-Time—X Part-Time—X.

11. Names of witnesses, if any—.

/s/ John D. McCauley
JOHN D. MCCAULEY
Business Representative

Please fill this form out completely and be as neat as possible.

(Must be filled out in triplicate)

RESPONDENT'S EXHIBIT 2(a)

SUBJECT: RESPONSIBILITIES OF LOBBY MANAGER FOR LOBBY DEPARTMENT

The Lobby Manager will be responsible for and have full authority of the Lobby Department. She will have complete control of the operations, including ordering, merchandising, displaying, and variety within the department.

The Lobby Manager will be responsible to the Store Manager and should confer with him on all problems. Whenever a Store Manager is not on duty, it is understood that the Assistant Store Manager will act as Store Manager in all respects.

SUBJECT: COMPANY POLICY—OPERATIONS

The Lobby Manager must operate her department through proper ordering, rotation of product, packaging of the product, cleanliness, merchandise care, and control of spoilage as laid down by the operational procedures of the company. When questions arise she should seek clarification with the Store Manager, of if necessary, the Supervisor in charge of her Lobby operation.

SUBJECT: COMPANY POLICY—GIFTS FROM SUPPLIERS

It is a violation of Company Policy for employees to accept gifts of any kind from a supplier or other companies with which we do business. Employees will not accept Christmas gifts, meals, tickets to entertainment events, recreational trips at the expense of the supplier, or any other gift from a supplier other than merchandising given purely as a sample for the purpose of demonstrating product quality.

SUBJECT: COMPANY POLICY ON SOLICITING, BETTING AND GAMBLING ON COMPANY PREMISES

Lobby Department personnel will not solicit, sell or buy punchboard chances, raffles, or chances of any kind and will refrain from all phases of betting and gambling on company premises. This policy applies to betting on baseball games, football games, etc.

SUBJECT: COMPANY POLICY ON EMPLOYEE PURCHASES, PURSES, CLOTHING AND ITEMS WITHIN THE DEPARTMENT

It is a policy that:

1. No purchases of any type will be made within the store while on company time.

2. Any minor purchases such as milk, cookies, etc. for lunch periods must be purchased after the Lobby employee punches out on a time clock. These items are not to reenter the store but must be consumed in the designated employee lunch area with a purchase receipt maintained by the purchaser.
3. No purses or bulky clothing items will be carried into the Lobby Department. All purses will be checked into the Bottle Booth. In the case of males, no male employee will carry into the Lobby Department any baggage, carry-all bags or bulky clothing items. These must be checked by employees at the Bottle Booth.
4. Major purchases such as daily or weekly shopping lists must be filled after the employee checks out on the time clock. Such purchases must be checked out through the authorized checkers as designated by the Store Manager and approved by the Division Manager.

SUBJECT: PERSONAL APPEARANCE

UNIFORM

FEMALE: The Company prescribed uniforms which are issued to you should be worn properly. Take good care of your uniform and it will always look fresh.

MALE: White shirt and black bow tie.

BADGE

BOTH MALE AND FEMALE: A name badge must be worn at all times—when you go into a store, don't you like to know the person with whom you are dealing?

HAIR

FEMALE: Hair should be well groomed in an easy to keep style.

MALE: Sideburns are not to exceed below ear lobe. Ears are to be visible and hair not to be of length to go over shirt collar.

FACE

FEMALE: Use cosmetics sparingly—be conservative. Keep teeth clean—avoid bad breath.

SUPREME COURT OF THE UNITED STATES

No. 73-1363

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

J. WEINGARTEN, INC.

ORDER ALLOWING CERTIORARI—Filed April 29, 1974

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted. The case is set for oral argument in tandem with No. 73-765.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1974 550000 275